ORIGINAL

No. 01-11006

Supreme Court of the United States

SUPREME COURT, U.S.
FILED
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WILLIAM VALUCK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM VALUCK
13880-058
Maxwell Air Force Base
Montgomery, AL 36112

QUESTION PRESENTED FOR REVIEW

1.) Whether 18 U.S.C. § 1956, the statute governing money laundering, should be construed as broadly as the Fifth Circuit did in Mr. Valuck's case, to include any form of 'money spending' involving ill gotten gains, contrary to the holdings of the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fifth Circuit.

More specifically, the Petitioner William Valuck and the Respondent United States of America are the only parties. Neither party is a company, corporation, or subsidiary of any company or corporation.

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OPINIONS BELOW

William Valuck, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on 3-14-02.

The 3-14-02 opinion of the Court of Appeals for the Fifth Circuit, whose judgment is herein sought to be reviewed, is a published decision reported at 286 F.3d 221; 2002 U.S. App. LEXIS 4170, and is reprinted in the separate Appendix A to this Petition.

The prior opinion and judgment (Judgment & Commitment Order) of the United States District Court for the Eastern District Of Texas, entered on 12-28-00 (Amended 4-4-01), is an unpublished decision, and is reprinted in the separate Appendix B to this Petition.

The docket sheets for the United States District Court for the Eastern District Of Texas are reprinted in the separate Appendix D to this Petition.

The docket sheets for the United States Court of Appeals for the Fifth Circuit are reprinted in the separate Appendix E to this Petition.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on 3-14-02. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES,

RULES AND REGULATIONS INVOLVED

28 U.S.C. § 1746 provides:

> Sec. 1746. Unsworn declarations under penalty of perjury -
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".
>
> Pub. L. 94-550, Sec. 1(a), Oct. 18, 1976, 90 Stat. 2534. *Id.*

18 U.S.C. § 1956 provides:

> 18 U.S.C. § 1956. Laundering of monetary instruments
>
> (a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--
>
> (A) (i) with the intent to promote the carrying on of specified unlawful activity; or
>
> (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986 [26 USCS § 7201 or 7206]; or
>
> (B) knowing that the transaction is designed in whole or in part-
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
>
> (ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $ 500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $ 500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) $ 10,000.

(c) As used in this section--

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means--

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31 [31 USCS §§ 5311 et seq.];

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire;

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978 [12 USCS § 3101(7)]);

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 3-14-02 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act [21 USCS § 863] (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act [22 USCS § 2778(c)], section

11 (relating to violations) of the Export Administration Act of 1979 [50 USCS Appx. § 2410], section 206 (relating to penalties) of the International Emergency Economic Powers Act [50 USCS § 1705], section 16 (relating to offenses and punishment) of the Trading with the Enemy Act [50 USCS Appx § 16], any felony violation of section 15 of the Food Stamp Act of 1977 [7 USCS § 2024] (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $ 5,000, or any felony violation of the Foreign Corrupt Practices Act; or

(E) Environmental Crimes. a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(F) Any act or activity constituting an offense involving a Federal health care offense.

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if--

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $ 10,000.

(g) Notice of conviction of financial institutions. If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy. *Id.*

18 U.S.C. § 1343 provides:

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $ 1,000,000 or imprisoned not more than 30 years, or both. *Id.*

18 U.S.C. § 2314 provides:

§ 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $ 5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of $ 5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely

making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof--

Shall be fined under this title or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money. *Id.*

STATEMENT OF THE CASE

The facts relevant to this petition are set forth in the Court of Appeals opinion and include the following:

> Appellant William Martin Valuck was tried before a jury and convicted of one count of wire fraud, in violation of 18 U.S.C. § 1343, two counts of theft of funds valued $ 5,000 or more in interstate commerce, in violation of 18 U.S.C. § 2314, and one count of money laundering, in violation of 18 U.S.C. § 1956. On appeal, Valuck claims the evidence supporting his conviction under Count Five, the money laundering conviction, is insufficient, as a matter of law, that the government improperly used an accomplice's guilty plea to prove his guilt, and that his trial counsel was ineffective. For the reasons stated below, we affirm.
>
> I.
>
> Valuck, a physician, operated a small ambulance company in Huntsville, Texas, with Mike Cleveland acting as the operations manager. Shortly after Valuck's ambulance company went [**2] out of business, Cleveland filed a d/b/a for a new business, Life Guard Services, and subsequently opened a checking account for the business at Citizens Bank in Huntsville. Cleveland was the only signatory on the account...
>
> After establishing the account, Cleveland and Valuck began soliciting various individuals in the health care industry for investment in various prime bank debenture programs. At trial, the government presented the testimony of several of the individuals whom Valuck solicited and they testified that Valuck described the potential investment as a bank trading program with low risk and a guarantee of quick returns. In particular, Valuck told Emile Roques, a pharmacist, that returns were guaranteed within 120 days of investment and that, at the [**3] very least, the investment would earn eight percent interest in a bank account. Furthermore, Valuck told Roques that his previous investments in similar schemes had yielded successful results when, in fact, they had not. Significant to this appeal, however, is the investment of Susan Snow, a physician, and Richard Bratt, Snow's common law spouse, who was in charge of Snow's finances at the time.
>
> ... Snow and Bratt invested $ 100,000 in his scheme. Convinced that such an investment was sound, Snow executed a written agreement with Valuck that called for a $ 100,000 investment to be made by wire transfer. Per the agreement, and in accordance with the wiring instructions furnished by Cleveland, Bratt sent a wire transmission to Muriel Seibert & Company in New York requesting that $ 100,000 be transferred to the Life Guard Services account at Citizens Bank. The funds ultimately reached the account on February 15, 1996. A summary of the funds going into the account reveals [**4] that Snow's investment was spent within two weeks of the wire transfer on personal and business expenses by Valuck, Cleveland, and others. It is this wire [*224] transfer that forms the basis of the wire fraud charged in Count Two of the indictment.
>
> At trial, Cleveland testified that at the time of the Snow/Bratt wire transfer both he and Valuck were low on cash and they each took a draw out of the $

100,000. Because Valuck was not a signatory to the account, he did not have direct access to the funds. In order to gain access to the funds, Valuck told Cleveland to purchase cashier's checks with money withdrawn from the account. As a result, Valuck obtained $ 26,000 from the Life Guard Services account.

Special Agent Paul Geboski testified as to the actual disposition of the Snow/Bratt investment. Prior to the deposit of the $ 100,000, the Life Guard Services account had a balance of $ 200. The same day the deposit was made, five cashier's checks, totaling $ 25,000, were purchased using the newly acquired funds, and an additional $ 1,000 in cash was withdrawn from the account. In particular, a $ 10,000, a $ 5,000, and a $ 2,500 check were deposited in the Mid-County Teachers Credit Union [**5] Account of Sylvia Hargroder, Valuck's girlfriend. A $ 5,000 check was deposited in a joint account held by Valuck and Hargroder. The final check, in the amount of $ 2,500, was cashed by Valuck at Citizens Bank. Valuck readily admits that he negotiated the checks and eventually spent the money on personal expenses. The purchase and negotiation of these checks form the basis for the money laundering charge alleged in Count Five of the indictment...

Valuck challenges the sufficiency of the evidence used to convict him of money laundering under 18 U.S.C. § 1956. That statute provides in pertinent part:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial [**8] transaction which in fact involves the proceeds of specified unlawful activity-
>
> (A)(i) with the intent to promote the carrying on of specified unlawful activity . . . [shall be guilty of money laundering].

18 U.S.C. § 1956(a)(1) (1994). To sustain a conviction under this section, the government must prove beyond a reasonable doubt that (1) the financial transaction in question involves the proceeds of unlawful activity, (2) the defendant had knowledge that the property involved in the financial transaction represented proceeds of an unlawful activity, and (3) the financial transaction was conducted with the intent to promote the carrying on of a specified unlawful activity. *United States v. Wilson*, 249 F.3d 366, 377 (5th Cir. 2001). For our purposes, the Snow/Bratt transaction represents the unlawful activity, and the cashing of the checks represents the financial transaction.

As discussed above, Valuck does not appeal the sufficiency of the government's evidence as to Count Two of the indictment, charging him with wire fraud with respect to the Snow/Bratt transaction. Thus the first element of the offense is established. Also, Valuck [**9] does not contest the sufficiency of the government's evidence with respect to his knowledge about the illegality of using the cashier's checks, the funds for which were illegally obtained from the Snow/Bratt transaction. Thus the second element of the offense is established.

Valuck does, however, challenge the sufficiency of the evidence regarding the third element of the offense.

Even though Valuck admits negotiating the cashier's checks in question, once when he received them from Cleveland and again when he deposited or cashed the checks, he contends that such negotiations cannot, as a matter of law, promote the antecedent wire fraud. In turn, Valuck argues that if we were to uphold his conviction for money laundering on the evidence before us, we would essentially turn the money laundering statute into a "money spending" statute. See *United States v. Olaniyi-Oke*, 199 F.3d 767, 770 (5th Cir. 1999) (using proceeds solely for personal expenses will not sustain a money laundering conviction). Although intriguing, we do not find this argument persuasive. Instead, we agree with the government that the manner in which Valuck spent the ill-gotten money is irrelevant because [**10] it is the deposit of funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor [*226] wire fraud. n2

----------Footnotes----------

n2 Count Five of the indictment states:

> On or about the 15th day of February, 1996, in the Eastern District of Texas and elsewhere, WILLIAM MARTIN VALUCK, Defendant herein, knowing that the money or funds involved in a financial transaction represented the proceeds of some form of unlawful activity, that being the wire fraud described in Count 2 of this indictment which is adopted herein, did knowingly conduct a financial transaction, with the intent to promote the carrying on of such specified unlawful activity, said financial transaction being the purchase and negotiation of $ 25,000 of cashier's checks from Citizens Bank of Texas, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(1) [sic].(emphasis added).

----------End Footnotes----------

To start, we categorically reject any suggestion by Valuck that a financial transaction cannot [**11] promote a completed illegal activity for purposes of section 1956(a)(1)(A)(i). As we made clear in *United States v. Cavalier*, the cashing of an illegally obtained check can promote the completion of an underlying unlawful act. 17 F.3d 90, 93 (5th Cir. 1994); see, e.g., United States v. Paramo, 998 F.2d 1212, 1218 (3d Cir. 1993) ("a defendant can engage in financial transactions that promote not only ongoing or future unlawful activity, but also prior unlawful activity"); *United States v. Montoya*, 945 F.2d 1068, 1076 (9th Cir. 1991) (same); But see, *United States v. Jolivet*, 224 F.3d 902, 909 (8th Cir. 2000) ("We find no logic in the government's suggestion that [defendant] could promote the carrying on of an already completed crime."). We now take this opportunity to reaffirm our position in Cavalier and we note further that this court subscribes to a broad interpretation of the word "promote" within the context of section 1956. Not only is our view consistent with that of other circuits, it is also in line with how the word is commonly understood within the legal community. See Black's Law Dictionary [**12] 1214 (6th ed. 1990) (to "promote" something is to "contribute to [its] growth, enlargement, or prosperity of; . . . to advance"). Here,

Valuck's negotiation of the cashier's checks most certainly advanced the underlying wire fraud, in that it allowed Valuck to prosper from his wrongdoing by completing the antecedent wire fraud. Having said this, we now turn to the merits of Valuck's claim.

To satisfy the "promotion" element of a money laundering conviction, we require the government to show that a defendant conducted the financial transaction in question with the specific intent of promoting the specified unlawful activity. *Brown*, 186 F.3d at 670. In *Brown*, a case on which Valuck heavily relies, we reversed a defendant's convictions pursuant to section 1956(a)(1)(A)(i) where the defendant used the proceeds from an illegal activity to write checks for legitimate business expenditures. *Id.* In doing so, we stressed the importance of avoiding turning the "money laundering statute into a 'money spending statute.'" *Id.* (citing *United States v. Leonard*, 61 F.3d 1181, 1185 n.2 (5th Cir. 1995)); see also *United States v. Sanders*, 928 F.2d 940, 946 (10th Cir. 1991). [**13] Valuck contends that his case is factually indistinguishable from Brown. We, however, disagree.

In *Brown*, the government indicted the defendant on the basis of his "spending transactions," not on the receipt and subsequent depositing of illegal funds. 186 F.3d at 669 n.12. In this case, however, the government alleges that the "purchase and negotiation" n3 of the cashier's checks [*227] forms the basis for the money laundering charge. Based on this, by upholding Valuck's conviction for money laundering we are in no way converting section 1956 into a "money spending statute," as Valuck suggests, because we focus solely on the negotiation of the cashier's checks. In fact, other circuits have upheld similar "receipt and deposit" convictions. n4 For example, in *Paramo*, the Third Circuit upheld a defendant's conviction for money laundering where the defendant cashed embezzled checks from the IRS and then spent the ill-gotten gain on personal expenses. 998 F.2d at 1217-18. The court explained that because the defendant

> understood that the embezzled checks would have been worthless unless cashed at a bank or otherwise exchanged for negotiable currency [**14] . . . the jury rationally could have found that the cashing of each check contributed to the growth and prosperity of each preceding mail fraud by creating value out of an otherwise unremunerative enterprise.

Id. at 1218. As noted above, in *Cavalier* we endorsed this same approach. 17 F.3d at 93. n5 Applying this "receipt and deposit" approach to Valuck's case, we are left with the clear impression that his conviction must be upheld.

----------Footnotes----------

n3 The government alleges both the "purchase and negotiation" of the cashier's checks; however, it is important to note that Valuck did not actually purchase the cashier's checks. In actuality, Cleveland did so at the request of Valuck. Also, Valuck attempts to draw a distinction between "negotiation" and "deposit," as if the two can be distinguished in the banking context. In that context, however, no such distinction exists because in order to "deposit" a check

into a bank account, one must first "negotiate" the check, i.e., transfer the check to the bank.

n4 Although we recognize that "receipt and deposit" prosecutions are "disfavored," Brown, 186 F.3d at 669 n.12, this fact does not alter the result we reach today. That is, simply because such prosecutions are disfavored has no bearing on whether we should sustain convictions based upon such prosecutions. [**15]

n5 **We recognize a split among the circuits on this issue**. Compare *United States v. Haun*, 90 F.3d 1096, 1100-01 (6th Cir. 1996) (upholding promotion conviction where evidence presented allowed a reasonable jury to infer that cashing of checks promoted "not only his prior unlawful activity, but also his ongoing and future unlawful activity"), *United States v. Manarite*, 44 F.3d 1407, 1416 (9th Cir. 1995) (upholding promotion conviction because chip-skimming scheme could not benefit its participants unless chips were cashed, rational jury could conclude chips were cashed with intent to promote the chip-skimming scheme), and *United States v. Montoya*, 945 F.2d 1068, 1076 (9th Cir. 1991) (upholding promotion conviction and noting that "depositing the check provided an opportunity for [defendant] to carry out the illegal bribery"), with *United States v. Jolivet*, 224 F.3d 902, 909 (8th Cir. 2000) (reversing promotion conviction because subsequent activity cannot "promote the carrying on of an already completed crime"), and *United States v. Heaps*, 39 F.3d 479, 486 (4th Cir. 1994) (expressly rejecting broad statutory interpretation employed by Third and Ninth Circuits as inconsistent with congressional intent). Cf. *United States v. Calderon*, 169 F.3d 718, 722 (11th Cir. 1999) (questioning whether the decisions of the Third, Sixth, and Ninth Circuits "were rightly decided," but not deciding the issue).

----------End Footnotes---------- [**16]

In this case, Valuck intentionally chose not to include his own name as a signatory on the Cleveland account so as to avoid the watchful eye of the IRS. Consequently, Valuck did not have direct access to the illegally obtained funds that were deposited into the account. Instead, Valuck's only access to the funds was through his co-conspirator, Cleveland, and the only way Valuck could prosper from this scheme was to receive the cashier's checks and then either deposit or cash the check, ultimately completing the underlying wire fraud. Valuck chose to deposit $ 25,000. Absent such deposits, the uncashed checks would have been worthless. Thus, a jury could have rationally concluded that the depositing of the checks promoted both the growth and prosperity of the antecedent wire fraud by generating "value out of an [*228] otherwise unremunerative enterprise." Paramo, 998 F.2d at 1218. While it is true that had Valuck's name been on the account in question, and he withdrew the money and spent the money for personal expenses, our decision in Brown would cast some serious doubt on the government's money laundering conviction. This is not, however, the manner in which Valuck [**17] proceeded. Here, the success of Valuck's wire fraud was predicated on the transfer of money from Cleveland to Valuck. Therefore, it is the absence of Valuck's name on the account that helped promote the prior unlawful activity by allowing Valuck to avoid detection by the IRS. Therefore, we conclude

> that a rational jury could have found that Valuck's negotiation of the cashier's checks promoted the antecedent wire fraud, and that in negotiating the checks Valuck specifically intended to promote the already completed wire fraud...
>
> For the foregoing reasons, we AFFIRM.

United States v. Valuck, 286 F.3d 221; 2002 U.S. App. LEXIS 4170 (5th Cir. 3-14-02) (emphasis added)

Mr. Valuck demonstrates within that this Court should grant his Petition For Writ Of Certiorari to resolve a conflict among the United States courts of appeals as to the scope of the federal money laundering statute, 18 U.S.C. § 1956(A)(1).

REASONS FOR GRANTING THE WRIT

1.) THIS COURT SHOULD GRANT MR. VALUCK'S PETITION FOR WRIT OF CERTIORARI TO RESOLVE A CONFLICT AMONG THE UNITED STATES COURTS OF APPEALS AS TO THE SCOPE OF THE FEDERAL MONEY LAUNDERING STATUTE, 18 U.S.C. § 1956(A)(1)

Supreme Court Rule 10 provides in relevant part as follows:

> **Rule 10.**
> **CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI**
>
> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> **(a)** a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision... *Id.*

Supreme Court Rule 10(a).

1A.) 18 U.S.C. § 1956(A)(1), As Construed By The Fifth Circuit In Mr. Valuck's Case, Is Overbroad, Converting The Statute Into A 'Money Spending Statute' In Direct Conflict With The Decisions Of The Fourth, Sixth, Eighth, Tenth, And Eleventh Circuits.

As set forth in the Statement of the Case, supra, the Court of Appeals for the Fifth Circuit directly held that Mr. Valuck's act of negotiating cashier's checks he received from a codefendant, who purchased the cashier's checks from funds wired to the codefendant's checking account by a victim of wire fraud "promoted", within the meaning of 18 U.S.C. § 1956(A)(1)(A)(i), the antecedent crime of wire fraud which was complete and completed when the alleged victim wired funds to the codefendant's account. In other words, the Court of

Appeals held that Mr. Valuck violated 18 U.S.C. § 1956(A)(1)(A)(i) by simply spending ill gotten money. (Statement of the Case) (See Appendix A)

This decision by the Fifth Circuit directly conflicts with the decisions of the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits in the following cases: *United States v. Heaps*, 39 F.3d 479, 486 (4th Cir. 1994) (expressly rejecting broad statutory interpretation employed by Third and Ninth Circuits as inconsistent with congressional intent); *United States v. McGahee*, 257 F.3d 520; 2001 U.S. App. LEXIS 15417 (6th Cir. 2001) (In the context of money laundering charges, paying for personal goods, alone, is not sufficient to establish that funds were used to promote an illegal activity. To further a criminal activity, the transaction must be explicitly connected to the mechanism of the crime. Furthermore, the government has to demonstrate that connection.); *United States v. Jolivet*, 224 F.3d 902, 909 (8th Cir. 2000) (reversing promotion conviction because subsequent activity cannot "promote the carrying on of an already completed crime"); *United States v. Anderson*, 189 F.3d 1201; 1999 U.S. App. LEXIS 20037 (10th Cir. 1999) ("...this court has cautioned against interpreting the statute so broadly as to "turn the money laundering statute into a 'money spending statute.'" We have recognized the difficulty "of separating money laundering, which is punishable by up to twenty years in prison, [*1209] from mere money spending, which is legal.") (quoting *United States v. Sanders*, 928 F.2d 940, 946 (10th Cir. 1991) and *United States v. Garcia-Emanuel*, 14 F.3d 1469, 1474 (10th Cir. 1994)); *Cf. United States v. Calderon*, 169 F.3d 718, 722 (11th Cir. 1999) (questioning decisions of the courts of appeals which read 18 U.S.C. § 1956(A)(1)(A)(i) overbroadly).

The decisions of the foregoing Courts of Appeals have unequivocally determined, contrary to the decision of the Fifth Circuit, that, in the context of money laundering charges, paying for personal goods, alone, is not sufficient to establish that funds were used to promote an

illegal activity. To further a criminal activity, the transaction must be explicitly connected to the mechanism of the crime. Furthermore, the government has to demonstrate that connection.

The issue was squarely presented and straightforwardly decided with the Court of Appeals for the Fifth Circuit conceding that it "recognize[d] a split among the circuits on this issue".[1] In the words of the Tenth Circuit, the Fifth Circuit has converted the money "laundering" statute into a "money spending statute". *United States v. Anderson*, 189 F.3d 1201; 1999 U.S. App. LEXIS 20037 (10th Cir. 1999). The split in the circuits is clear cut and the opposing positions are hardening instead of harmonizing.

This Court has never resolved this question which divides the Courts of Appeals and, as is apparent from the numerous published decisions[2], the unsettled question is a constantly recurring one which has created much uncertainty in the courts below. These facts strongly militate for grant of certiorari. *Montana v. Hall*, 481 U.S. 400, 406, 95 L.Ed.2d 354, 107 S.Ct. 1825 (1987); *United States v. Mendoza*, 464 U.S. 154, 78 L.Ed.2d 379, 104 S.Ct. 568 (198); *Braxton v. United States*, 500 U.S. 344, 114 L.Ed.2d 385, 111 S.Ct. 1854 (1991); *Stinson v. United States*, 508 U.S. ___; ___, and [n.], 123 L.Ed.2d 598, 605 and [n. 2], 113 S.Ct. 1913 (1993); *Bailey v. United States*, 516 U.S. ___, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995).

Additionally, this case presents an opportunity for this Court to resolve this unsettled question in a case which can be broadly applied in the courts below. This is a further and important consideration which strongly militates for grant of certiorari. *Vasquez v. United States*, 454 U.S. 975, 70 L.Ed.2d 396, 102 S.Ct. 528 (1981).

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[1] While the Court of Appeals for the Fifth Circuit indicated its belief that the Sixth Circuit followed its expansive reading of 18 U.S.C. § 1956, careful review of *United States v. McGahee*, 257 F.3d 520; 2001 U.S. App. LEXIS 15417 (6th Cir. 2001) indicates that, here again, the Fifth Circuit is out of step.

Based on all of the foregoing, this Court should grant certiorari and review the judgment of the Court of Appeals for the Fifth Circuit in Mr. Valuck's case.

[2] In the last year alone, there were 443 federal court cases involving "money laundering". (Appendix, Exhibits F)

CONCLUSION

For all of the foregoing reasons, Petitioner William Valuck respectfully prays that his Petition for Writ of Certiorari be **GRANTED** and the case set for argument on the merits.

WILLIAM VALUCK
13880-058
Maxwell Air Force Base
Montgomery, AL 36112

Date: June 12, 2002

No.

Supreme Court of the United States

WILLIAM VALUCK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

COMES NOW PETITIONER William Valuck and submits the attached appendix pursuant to Supreme Court Rules.

WILLIAM VALUCK
13880-058
Maxwell Air Force Base
Montgomery, AL 36112

Date: June 12, 2002

APPENDIX A

ORDER & JUDGMENT OF THE COURT OF APPEALS
FOR THE FIFTH CIRCUIT
DATED 3-14-02

*286 F.3d 221, *; 2002 U.S. App. LEXIS 4170, ***

UNITED STATES OF AMERICA, Plaintiff - Appellee, VERSUS WILLIAM MARTIN **VALUCK**, Defendant - Appellant.

No. 00-41479

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

286 F.3d 221; 2002 U.S. App. LEXIS 4170

March 14, 2002, Decided

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Eastern District of Texas. 1:98-CR-206-ALL. Howell Cobb, US District Judge.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant appealed from an order of the United States District Court for the Eastern District of Texas convicting him of one count of wire fraud, in violation of 18 U.S.C.S. § 1343, two counts of theft of funds valued $ 5,000 or more in interstate commerce, in violation of 18 U.S.C.S. § 2314, and one count of money laundering, in violation of 18 U.S.C.S. § 1956.

OVERVIEW: On appeal, defendant claims the evidence supporting his money laundering conviction was insufficient, as a matter of law, that the government improperly used an accomplice's guilty plea to prove his guilt, and that his trial counsel was ineffective. The court of appeals rejected these arguments and affirmed his convictions. The appellate court agreed with the government that the manner in which the defendant spent the ill-gotten money is irrelevant because it is the deposit of funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor wire fraud. Further, where the introduction of defendant's co-conspirator's guilty plea served the proper purpose of showing the jury that the co-conspirator received no favorable treatment in return for his testimony, the district court did not commit plain error by admitting evidence of the co-conspirator's guilty plea. Finally, the appellate court found the defendant's Sixth Amendment claim of ineffective assistance was speculative in nature and not appropriate upon direct review.

OUTCOME: Defendant's convictions were affirmed.

CORE TERMS: wire fraud, money laundering, unlawful activity, cashier's, guilty plea, deposit, negotiation, indictment, cashed, spent, promotion, carrying, guilt, wire, plea agreement, accomplice, antecedent, favorable, spending, cashing, direct examination, personal expenses, deposited, co-conspirator, introducing, impeachment, depositing, prosperity, supervised, promoted

CORE CONCEPTS - Hide Concepts

Criminal Law & Procedure : A als : Standards of Review : Standards G lly
A federal appellate court's review of a jury's verdict is tempered with great deference toward the decision of the jury, and the court must evaluate the evidence in the light most favorable to the jury verdict.

Criminal Law & Procedure : Appeals : Standards of Review : De Novo Review
A district court's denial of a motion for acquittal is reviewed de novo.

Criminal Law & Procedure : Evidence : Weight & Sufficiency
Criminal Law & Procedure : Appeals : Standards of Review : De Novo Review
When evaluating a challenge to the sufficiency of the evidence, federal appellate courts must view the evidence in the light most favorable to the verdict and the court will uphold the verdict if a rational juror could have found each element of the charged offense beyond a reasonable doubt. Appellate review is de novo, and if the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, a defendant is entitled to a judgment of acquittal.

Criminal Law & Procedure : Criminal Offenses : Miscellaneous Offenses : Money Laundering
See 18 U.S.C.S. § 1956(a)(1).

Criminal Law & Procedure : Criminal Offenses : Miscellaneous Offenses : Money Laundering
To sustain a conviction under 18 U.S.C.S. § 1956, the government must prove beyond a reasonable doubt that (1) the financial transaction in question involves the proceeds of unlawful activity, (2) the defendant had knowledge that the property involved in the financial transaction represented proceeds of an unlawful activity, and (3) the financial transaction was conducted with the intent to promote the carrying on of a specified unlawful activity.

Criminal Law & Procedure : Criminal Offenses : Miscellaneous Offenses : Money Laundering
Pursuant to 18 U.S.C.S. § 1956, the cashing of an illegally obtained check can promote the completion of an underlying unlawful act. A defendant can engage in financial transactions that promote not only ongoing or future unlawful activity, but also prior unlawful activity.

Criminal Law & Procedure : Criminal Offenses : Miscellaneous Offenses : Money Laundering
To satisfy the "promotion" element of a money laundering conviction, 18 U.S.C.S. § 1956, courts require the government to show that a defendant conducted the financial transaction in question with the specific intent of promoting the specified unlawful activity.

Criminal Law & Procedure : Appeals : Standards of Review : Plain Error
Where an appellant's trial counsel did not object to the introduction of evidence at trial, appellate review is for plain error.

Evidence : Relevance : Pleas, Plea Discussions & Related Statements
As a general rule, a witness-accomplice guilty plea may be admitted into evidence if it serves a legitimate purpose and a proper limiting instruction is given.

Evidence : Relevance : Pleas, Plea Discussions & Related Statements

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Because the conviction of a co-conspirator may be used to impeach that co-conspirator's testimony, the prosecutor may introduce the plea in order to "blunt the sword" of anticipated impeachment by revealing the information first.

Criminal Law & Procedure : Counsel : Effective Assistance : Appeals
As a general rule, Sixth Amendment claims of ineffective assistance of counsel should not be litigated on direct appeal, unless they were previously presented to the trial court.

COUNSEL: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Robert L Rawls, Assistant US Attorney, US Attorney's Office, Eastern District of Texas, Beaumont, TX.

For WILLIAM MARTIN **VALUCK,** Defendant - Appellant: George McCall Secrest, Jr, Houston, TX.

JUDGES: Before KING, Chief Judge, DAVIS, and MAGILL *, Circuit Judges.

* Circuit Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

OPINIONBY: Magill

OPINION:

[*223] MAGILL, Circuit Judge:

Appellant William Martin **Valuck** was tried before a jury and convicted of one count of wire fraud, in violation of 18 U.S.C. § 1343, two counts of theft of funds valued $ 5,000 or more in interstate commerce, in violation of 18 U.S.C. § 2314, and one count of money laundering, in violation of 18 U.S.C. § 1956. On appeal, **Valuck** claims the evidence supporting his conviction under Count Five, the money laundering conviction, is insufficient, as a matter of law, that the government improperly used an accomplice's guilty plea to prove his guilt, and that his trial counsel was ineffective. For the reasons stated below, we affirm.

I.

Valuck, a physician, operated a small ambulance company in Huntsville, Texas, with Mike Cleveland acting as the operations manager. Shortly after **Valuck's** ambulance company went [**2] out of business, Cleveland filed a d/b/a for a new business, Life Guard Services, and subsequently opened a checking account for the business at Citizens Bank in Huntsville. Cleveland was the only signatory on the account because **Valuck** feared that his previous tax troubles would raise questions with the Internal Revenue Service (the "IRS"), possibly resulting in a tax lien on the newly-opened account. n1

----------Footnotes----------

n1 In fact, the IRS placed tax liens on another of **Valuck's** accounts.

----------End Footnotes----------

After establishing the account, eland and **Valuck** began soliciting vari. ,dividuals in the health care industry for investment in various prime bank debenture programs. At trial, the government presented the testimony of several of the individuals whom **Valuck** solicited and they testified that **Valuck** described the potential investment as a bank trading program with low risk and a guarantee of quick returns. In particular, **Valuck** told Emile Roques, a pharmacist, that returns were guaranteed within 120 days of investment and that, at the [**3] very least, the investment would earn eight percent interest in a bank account. Furthermore, **Valuck** told Roques that his previous investments in similar schemes had yielded successful results when, in fact, they had not. Significant to this appeal, however, is the investment of Susan Snow, a physician, and Richard Bratt, Snow's common law spouse, who was in charge of Snow's finances at the time.

Believing that **Valuck,** a physician with a high income, would not steer them in the wrong direction, and because **Valuck** assured Bratt that he had previously invested in such programs and that such investments were successful, Snow and Bratt invested $ 100,000 in his scheme. Convinced that such an investment was sound, Snow executed a written agreement with **Valuck** that called for a $ 100,000 investment to be made by wire transfer. Per the agreement, and in accordance with the wiring instructions furnished by Cleveland, Bratt sent a wire transmission to Muriel Seibert & Company in New York requesting that $ 100,000 be transferred to the Life Guard Services account at Citizens Bank. The funds ultimately reached the account on February 15, 1996. A summary of the funds going into the account reveals [**4] that Snow's investment was spent within two weeks of the wire transfer on personal and business expenses by **Valuck,** Cleveland, and others. It is this wire [*224] transfer that forms the basis of the wire fraud charged in Count Two of the indictment.

At trial, Cleveland testified that at the time of the Snow/Bratt wire transfer both he and **Valuck** were low on cash and they each took a draw out of the $ 100,000. Because **Valuck** was not a signatory to the account, he did not have direct access to the funds. In order to gain access to the funds, **Valuck** told Cleveland to purchase cashier's checks with money withdrawn from the account. As a result, **Valuck** obtained $ 26,000 from the Life Guard Services account.

Special Agent Paul Geboski testified as to the actual disposition of the Snow/Bratt investment. Prior to the deposit of the $ 100,000, the Life Guard Services account had a balance of $ 200. The same day the deposit was made, five cashier's checks, totaling $ 25,000, were purchased using the newly acquired funds, and an additional $ 1,000 in cash was withdrawn from the account. In particular, a $ 10,000, a $ 5,000, and a $ 2,500 check were deposited in the Mid-County Teachers Credit Union [**5] Account of Sylvia Hargroder, **Valuck's** girlfriend. A $ 5,000 check was deposited in a joint account held by **Valuck** and Hargroder. The final check, in the amount of $ 2,500, was cashed by **Valuck** at Citizens Bank. **Valuck** readily admits that he negotiated the checks and eventually spent the money on personal expenses. The purchase and negotiation of these checks form the basis for the money laundering charge alleged in Count Five of the indictment.

On December 16, 1998, **Valuck** was charged in a five-count indictment. In particular, **Valuck** was charged with two counts of wire fraud, two counts of causing the transmission of money valued at $ 5,000 or more in interstate travel, and one count of money laundering. At trial, the government presented the testimony of Cleveland. During the presentation of this testimony, the prosecution made numerous references to Cleveland's guilty plea in its opening statement, on direct examination of Cleveland, and during its closing argument. Notably, **Valuck's** trial counsel never objected to any of these references.

At the close of the government's case, **Valuck** made a motion for a judgment of acquittal. The motion was granted as to the substantive part [**6] of Count One (a wire fraud count) and denied as to the

remaining counts. **Valuck** ren . this objection at the close of all of the . nce, and that motion was denied in all respects. The jury returned guilty verdicts on the four remaining counts charged in the indictment, and **Valuck** received sixty months' imprisonment for wire fraud, two seventy-month sentences for interstate transportation, and seventy months' imprisonment for money laundering, all to run concurrently, along with concurrent three-year supervised release terms on each count. Additionally, the district court ordered **Valuck** to pay restitution in the amount of $ 634,484.91, the total amount lost by various investors, and special assessments in the amount of $ 200. A timely notice of appeal was filed on December 14, 2000. We have jurisdiction in this case pursuant to 28 U.S.C. § 1291.

II.

Our review of a jury's verdict is tempered with great deference toward the decision of the jury, and we must evaluate the evidence in the light most favorable to the jury verdict. United States v. McCauley, 253 F.3d 815, 818 (5th Cir. 2001). A district court's denial of a motion for [**7] acquittal is reviewed de novo. United States v. De Leon, 170 F.3d 494, 496 (5th Cir. 1999).

[*225] When evaluating a challenge to the sufficiency of the evidence, we must view the evidence in the light most favorable to the verdict and we will uphold the verdict if a rational juror could have found each element of the charged offense beyond a reasonable doubt. McCauley, 253 F.3d at 818. Our review is de novo, and "if 'the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence,' a defendant is entitled to a judgment of acquittal." United States v. Brown, 186 F.3d 661, 664 (5th Cir. 1999) (quoting United States v. Schuchmann, 84 F.3d 752, 754 (5th Cir. 1996)).

Valuck challenges the sufficiency of the evidence used to convict him of money laundering under 18 U.S.C. § 1956. That statute provides in pertinent part:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial [**8] transaction which in fact involves the proceeds of specified unlawful activity-
>
> (A)(i) with the intent to promote the carrying on of specified unlawful activity . . . [shall be guilty of money laundering].

18 U.S.C. § 1956(a)(1) (1994). To sustain a conviction under this section, the government must prove beyond a reasonable doubt that (1) the financial transaction in question involves the proceeds of unlawful activity, (2) the defendant had knowledge that the property involved in the financial transaction represented proceeds of an unlawful activity, and (3) the financial transaction was conducted with the intent to promote the carrying on of a specified unlawful activity. United States v. Wilson, 249 F.3d 366, 377 (5th Cir. 2001). For our purposes, the Snow/Bratt transaction represents the unlawful activity, and the cashing of the checks represents the financial transaction.

As discussed above, **Valuck** does not appeal the sufficiency of the government's evidence as to Count Two of the indictment, charging him with wire fraud with respect to the Snow/Bratt transaction. Thus the first element of the offense is established. Also, **Valuck** [**9] does not contest the sufficiency of the government's evidence with respect to his knowledge about the illegality of using the cashier's checks, the funds for which were illegally obtained from the Snow/Bratt transaction. Thus the second element of the

offense is established. **Valuck** s, however, challenge the sufficiency of vidence regarding the third element of the offense.

Even though **Valuck** admits negotiating the cashier's checks in question, once when he received them from Cleveland and again when he deposited or cashed the checks, he contends that such negotiations cannot, as a matter of law, promote the antecedent wire fraud. In turn, **Valuck** argues that if we were to uphold his conviction for money laundering on the evidence before us, we would essentially turn the money laundering statute into a "money spending" statute. See United States v. Olaniyi-Oke, 199 F.3d 767, 770 (5th Cir. 1999) (using proceeds solely for personal expenses will not sustain a money laundering conviction). Although intriguing, we do not find this argument persuasive. Instead, we agree with the government that the manner in which **Valuck** spent the ill-gotten money is irrelevant because [**10] it is the deposit of funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor [*226] wire fraud. n2

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n2 Count Five of the indictment states:

> - On or about the 15th day of February, 1996, in the Eastern District of Texas and elsewhere, WILLIAM MARTIN **VALUCK,** Defendant herein, knowing that the money or funds involved in a financial transaction represented the proceeds of some form of unlawful activity, that being the wire fraud described in Count 2 of this indictment which is adopted herein, did knowingly conduct a financial transaction, with the intent to promote the carrying on of such specified unlawful activity, said financial transaction being the purchase and negotiation of $ 25,000 of cashier's checks from Citizens Bank of Texas, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(1) [sic].

(emphasis added).

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

To start, we categorically reject any suggestion by **Valuck** that a financial transaction cannot [**11] promote a completed illegal activity for purposes of section 1956(a)(1)(A)(i). As we made clear in United States v. Cavalier, the cashing of an illegally obtained check can promote the completion of an underlying unlawful act. 17 F.3d 90, 93 (5th Cir. 1994); see, e.g., United States v. Paramo, 998 F.2d 1212, 1218 (3d Cir. 1993) ("a defendant can engage in financial transactions that promote not only ongoing or future unlawful activity, but also prior unlawful activity"); United States v. Montoya, 945 F.2d 1068, 1076 (9th Cir. 1991) (same); But see, United States v. Jolivet, 224 F.3d 902, 909 (8th Cir. 2000) ("We find no logic in the government's suggestion that [defendant] could promote the carrying on of an already completed crime."). We now take this opportunity to reaffirm our position in Cavalier and we note further that this court subscribes to a broad interpretation of the word "promote" within the context of section 1956. Not only is our view consistent with that of other circuits, it is also in line with how the word is commonly understood within the legal community. See Black's Law Dictionary [**12] 1214 (6th ed. 1990) (to "promote" something is to "contribute to [its] growth, enlargement, or prosperity of; . . . to advance"). Here, **Valuck's** negotiation of the cashier's checks most certainly advanced the underlying wire fraud, in that it allowed **Valuck** to prosper from his wrongdoing by completing the antecedent wire fraud. Having said this, we now turn to the merits of **Valuck's** claim.

To satisfy the "promotion" element of a money laundering conviction, we require the government to show that a defendant conducted the financial transaction in question with the specific intent of promoting the specified unlawful activity. Brown, 186 F.3d at 670. In Brown, a case on which **Valuck** heavily relies, we reversed a defendant's convictions pursuant to section 1956(a)(1)(A)(i) where the defendant used the proceeds from an illegal activity to write checks for legitimate business expenditures. Id. In doing so, we stressed the importance of avoiding turning the "money laundering statute into a 'money spending statute.'" Id. (citing United States v. Leonard, 61 F.3d 1181, 1185 n.2 (5th Cir. 1995)); see also United States v. Sanders, 928 F.2d 940, 946 (10th Cir. 1991). [**13] **Valuck** contends that his case is factually indistinguishable from Brown. We, however, disagree.

In Brown, the government indicted the defendant on the basis of his "spending transactions," not on the receipt and subsequent depositing of illegal funds. 186 F.3d at 669 n.12. In this case, however, the government alleges that the "purchase and negotiation" n3 of the cashier's checks [*227] forms the basis for the money laundering charge. Based on this, by upholding **Valuck's** conviction for money laundering we are in no way converting section 1956 into a "money spending statute," as **Valuck** suggests, because we focus solely on the negotiation of the cashier's checks. In fact, other circuits have upheld similar "receipt and deposit" convictions. n4 For example, in Paramo, the Third Circuit upheld a defendant's conviction for money laundering where the defendant cashed embezzled checks from the IRS and then spent the ill-gotten gain on personal expenses. 998 F.2d at 1217-18. The court explained that because the defendant

> understood that the embezzled checks would have been worthless unless cashed at a bank or otherwise exchanged for negotiable currency [**14] . . . the jury rationally could have found that the cashing of each check contributed to the growth and prosperity of each preceding mail fraud by creating value out of an otherwise unremunerative enterprise.

Id. at 1218. As noted above, in Cavalier we endorsed this same approach. 17 F.3d at 93. n5 Applying this "receipt and deposit" approach to **Valuck's** case, we are left with the clear impression that his conviction must be upheld.

----------Footnotes----------

n3 The government alleges both the "purchase and negotiation" of the cashier's checks; however, it is important to note that **Valuck** did not actually purchase the cashier's checks. In actuality, Cleveland did so at the request of **Valuck. Also, Valuck** attempts to draw a distinction between "negotiation" and "deposit," as if the two can be distinguished in the banking context. In that context, however, no such distinction exists because in order to "deposit" a check into a bank account, one must first "negotiate" the check, i.e., transfer the check to the bank.

n4 Although we recognize that "receipt and deposit" prosecutions are "disfavored," Brown, 186 F.3d at 669 n.12, this fact does not alter the result we reach today. That is, simply because such prosecutions are disfavored has no bearing on whether we should sustain convictions based upon such prosecutions. [**15]

n5 We recognize a split among the circuits on this issue. Compare United States v. Haun, 90 F.3d 1096, 1100-01 (6th Cir. 1996) (upholding promotion conviction where evidence presented allowed a reasonable

jury to infer that cashing of ch. , promoted "not only his prior unlawful . ity, but also his ongoing and future unlawful activity"), United States v. Manarite, 44 F.3d 1407, 1416 (9th Cir. 1995) (upholding promotion conviction because chip-skimming scheme could not benefit its participants unless chips were cashed, rational jury could conclude chips were cashed with intent to promote the chip-skimming scheme), and United States v. Montoya, 945 F.2d 1068, 1076 (9th Cir. 1991) (upholding promotion conviction and noting that "depositing the check provided an opportunity for [defendant] to carry out the illegal bribery"), with United States v. Jolivet, 224 F.3d 902, 909 (8th Cir. 2000) (reversing promotion conviction because subsequent activity cannot "promote the carrying on of an already completed crime"), and United States v. Heaps, 39 F.3d 479, 486 (4th Cir. 1994) (expressly rejecting broad statutory interpretation employed by Third and Ninth Circuits as inconsistent with congressional intent). Cf. United States v. Calderon, 169 F.3d 718, 722 (11th Cir. 1999) (questioning whether the decisions of the Third, Sixth, and Ninth Circuits "were rightly decided," but not deciding the issue).

----------End Footnotes---------- [**16]

In this case, **Valuck** intentionally chose not to include his own name as a signatory on the Cleveland account so as to avoid the watchful eye of the IRS. Consequently, **Valuck** did not have direct access to the illegally obtained funds that were deposited into the account. Instead, **Valuck's** only access to the funds was through his co-conspirator, Cleveland, and the only way **Valuck** could prosper from this scheme was to receive the cashier's checks and then either deposit or cash the check, ultimately completing the underlying wire fraud. **Valuck** chose to deposit $ 25,000. Absent such deposits, the uncashed checks would have been worthless. Thus, a jury could have rationally concluded that the depositing of the checks promoted both the growth and prosperity of the antecedent wire fraud by generating "value out of an [*228] otherwise unremunerative enterprise." Paramo, 998 F.2d at 1218. While it is true that had **Valuck's** name been on the account in question, and he withdrew the money and spent the money for personal expenses, our decision in Brown would cast some serious doubt on the government's money laundering conviction. This is not, however, the manner in which **Valuck** [**17] proceeded. Here, the success of **Valuck's** wire fraud was predicated on the transfer of money from Cleveland to **Valuck.** Therefore, it is the absence of **Valuck's** name on the account that helped promote the prior unlawful activity by allowing **Valuck** to avoid detection by the IRS. Therefore, we conclude that a rational jury could have found that **Valuck's** negotiation of the cashier's checks promoted the antecedent wire fraud, and that in negotiating the checks **Valuck** specifically intended to promote the already completed wire fraud.

III.

Valuck contends that the government improperly introduced Cleveland's guilty plea as substantive evidence of **Valuck's** guilt. Because **Valuck's** trial counsel did not object to the introduction of this evidence at trial, our review is for plain error. United States v. Chung, 261 F.3d 536, 539 (5th Cir. 2001) (citing United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc)).

As a general rule, "[a] witness-accomplice guilty plea may be admitted into evidence if it serves a legitimate purpose and a proper limiting instruction is given." United States v. Marroquin, 885 F.2d 1240, 1247 (5th Cir. 1989). [**18] Here, the plea agreement was introduced into evidence with an adequate limiting instruction, which properly advised the jury. In particular, the district court instructed the jury that "the fact that an accomplice has entered a plea of guilty to an offense charged is not evidence, in and of itself, of the guilt of any other person." Further, the district court instructed the jury that such testimony should be "received with caution and weighed with great care." We have, in the past, upheld nearly identical instructions to the ones given in this case. See United States v. Abravaya, 616 F.2d 250,

251-52 (5th Cir. 1980). Accordingly, based upon our examination of the district court's instructions, we are convinced that there was absolutely no error contained within the instruction, plain or otherwise. Next we must determine whether the government's introduction of the guilty plea serves a proper purpose.

In support of its introduction of Cleveland's guilty plea, the government argues that the purpose of introducing the plea was to show that there was no unduly favorable deal between the government and Cleveland in exchange for his testimony, and to avoid the impeachment [**19] of Cleveland's testimony. In United States v. Black, we noted the propriety of disclosing the nature of a plea agreement on direct examination, so as to ensure that the jury would not be left with the "impression that the government was not being fully candid," should the issue be raised first on cross-examination. 685 F.2d 132, 135 (5th Cir. 1982); see also Marroquin, 885 F.2d at 1247 (introducing plea agreement to show that no "sweetheart deal" existed between government and witness served a proper purpose). Furthermore, we also have recognized that where the conviction of a co-conspirator may be used to impeach that co-conspirator's testimony, the prosecutor may introduce the plea in order "to 'blunt the sword' of anticipated impeachment by revealing the information first." Marroquin, 885 F.2d at 1246. Here, the introduction of Cleveland's guilty plea served the dual purpose [*229] of reducing the potential effects of impeachment, while showing the jury that Cleveland had not been provided any "sweetheart deal" in exchange for his testimony.

At trial, the government referred to Cleveland's plea agreement in its opening statement, on direct [**20] examination of Cleveland, and in its closing statement. Surely, the government is permitted to outline its evidence during opening argument, and that, of course, includes evidence about an accomplice's guilty plea. United States v. Magee, 821 F.2d 234, 241 (5th Cir. 1987). With respect to the direct examination of Cleveland, Cleveland testified that he had pleaded guilty to wire fraud, completed almost two years in prison for that crime, was now on supervised release, and that in exchange for his testimony the court could, at most, reduce his term of supervised release by two years. This testimony showed that Cleveland and the government had not brokered any arrangement that might be conceived as conferring a great benefit on Cleveland in exchange for his testimony. Finally, in closing, the government referred to **Valuck** and Cleveland as "partners in crime" and noted that because Cleveland has "spent two years in prison, [his] testimony carries a great deal of credibility." Although these statements are somewhat overreaching, they are not, however, the "classic example" of an improper use of an accomplice's guilty plea in order to show the guilt of the accused, as [**21] **Valuck** suggests. In light of the adequate jury instructions given by the trial court, and the proper purposes that were served in introducing Cleveland's testimony, we hold that the district court did not commit plain error by admitting evidence of Cleveland's guilty plea.

IV.

Valuck argues that he was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution. Specifically, he alleges his trial counsel failed to (1) object to the introduction of his tax problems, (2) object to the introduction of Cleveland's guilty plea, (3) investigate the bases of opinions of Agent Geboski, (4) object to Geboski's testimony, (5) make an opening statement, and (6) object to the non-responsive answers of several government witnesses. As a general rule, Sixth Amendment claims of ineffective assistance of counsel should not be litigated on direct appeal, unless they were previously presented to the trial court. United States v. Delagarza-Villarreal, 141 F.3d 133, 141 (5th Cir. 1998). We do, in rare cases, grant an exception to this rule. Id. (quoting United States v. Navejar, 963 F.2d 732, 735 (5th Cir. 1992)). [**22] This, however, is not one of those rare cases. In fact, on the record before us, any determination as to the reasons for trial counsel's actions would be speculative in nature and this court does not decide issues on the basis of speculation alone. Accordingly,

we decline to entertain **Valuc.** ppeal on this ground, but we do so with prejudice to **Valuck's** right to raise this issue collaterally in a habeas corpus proceeding. Delagarza-Villarreal, 141 F.3d at 141; United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987).

V.

For the foregoing reasons, we AFFIRM.

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APPENDIX B

JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
ENTERED 12-28-00 (AMENDED 4-4-01)

AO 245B (Rev. 8/96) Sheet 1 - Judgment in a Crim

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BY

United States District Court

Eastern District of Texas

UNITED STATES OF AMERICA
v.
WILLIAM MARTIN VALUCK

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 1:98CR00206-001
C. Haden "Sonny" Cribbs
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) 2, 3, 4 & 5 of the Indictment after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 1343	Wire Fraud	02/14/1996	2
18 U.S.C. § 2314	Interstate transportation of property taken by fraud	03/30/1996	3 & 4
18 U.S.C. § 1956 (a)(1)(A)(1)	Money Laundering	02/15/1996	5

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 383-40-4486
Defendant's Date of Birth: 10/23/1942
Defendant's USM No.: 13880-058
Defendant's Residence Address:
2803 Chandler Street
Kilgore TX 75662
Defendant's Mailing Address:
2803 Chandler Street
Kilgore TX 75662

12/14/2000
Date of Imposition of Judgment

Signature of Judicial Officer

HOWELL COBB
U.S. DISTRICT JUDGE
Name & Title of Judicial Officer

December 28, 2000
Date

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DEFENDANT: WILLIAM M. .N VALUCK

CASE NUMBER: 1:98CR00206-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 70 month(s).

This term of imprisonment consists of 60 months as to court 2 and 70 months as to courts 3, 4 and 5 all to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be placed in the minimum security facility located at Maxwell Air Force Base in Alabama or at Eglin Air Force Base in Flordia.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ a.m./p.m. on _____.
- ☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☒ before 2 p.m on 01/29/2001.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

Deputy U.S. Marshal

DEFENDANT: WILLIAM M. VALUCK

CASE NUMBER: 1:98CR00206-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 year(s).

This term of supervised release consists of 3 years as to counts 2, 3, 4, and 5 to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☒ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page 4

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, o other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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DEFENDANT: WILLIAM MA...N VALUCK

CASE NUMBER: 1:98CR00206-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not commit any offenses against a foreign state or nation.

The defendant shall pay any financial penalty that is imposed by this judgment, and that remains unpaid at the commencement of the term of supervised release.

The defendant shall provide the probation officer with access to any requested financial information for purposes of monitoring restitution.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

011

B4

DEFENDANT: WILLIAM MA . VALUCK

CASE NUMBER: 1:98CR00206-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 200.00	$ 0.00	$ 634,484.91

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ 0.00 .

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case will be entered after such a determination.

☒ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	* Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Emile Roques, III	$134,500.00	$134,500.00	
Gloria Walker	$106,000.00	$106,000.00	
Richard Bratt	$50,000.00	$50,000.00	
Susan Snow	$50,000.00	$50,000.00	
See Additional Restitution Payees - Page 6 Totals:	$ 634,484.91	$ 634,484.91	

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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: WILLIAM MARTIN VALUCK

CASE NUMBER: 1:98CR00206-001

ADDITIONAL RESTITUTION PAYEES

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Doug Becker	$63,500.00	$63,500.00	
Rosalie Joubert	$30,000.00	$30,000.00	
Mark Randal Fontenot	$49,984.91	$49,984.91	
Paul Proffitt	$100,000.00	$100,000.00	
William Matthews	$50,000.00	$50,000.00	

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

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0114

DEFENDANT: WILLIAM MA VALUCK

CASE NUMBER: 1:98CR00206-001

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☐ in full immediately; or

B ☒ $ 200.00 immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____; or

D ☒ Payment to begin immediately. Any amount that remains unpaid when the defendant is placed on supervision is to be paid on a monthly basis at the rate of at least 10% of the defendant's monthly gross income, to be changed during supervision if needed, based on the defendant's changed circumstances, pursuant to 18 USC 3664 (k).

E ☐ in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary penalty payments are to be made to the U.S. District Court, Fine & Restitution Section, P.O. Box 570, Tyler, TX 75710, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

All interest on restitution is waived.

☒ Joint and Several

Case Number (including Defendant Number)	Defendant Name	Joint and Several Amount
1:98CR22-1	Michael Sims Cleveland	$634,484.91

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are to be made as directed by the court, the probation officer, or the United States attorney.

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0115

DEFENDANT: WILLIAM M. [illegible]VALUCK

CASE NUMBER: 1:98CR00206-001

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 27

Criminal History Category: I

Imprisonment Range: **70 to 87 months**

Supervised Release Range: **2 to 3 years**

Fine Range: $ 12,500.00 to $ 1,299,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 0.00

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the forseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

C116

B8

U.S. District Court

Texas, Eastern (Beaumont)

CRIMINAL DOCKET FOR CASE #: 98-CR-206-ALL

USA v. Valuck

Filed: 12/16/98
Dkt# in other court: None

Case Assigned to: Judge Howell Cobb

WILLIAM MARTIN VALUCK (1) defendant [term 12/28/00]	**Clarence H Cribbs, Jr** [term 12/28/00] [COR LD NTC ret] Law Offices of C Haden "Sonny" Cribbs Jr 7705 Calder Beaumont, TX 77707 Jefferson 409/866-6761 FTS good

****

4/4/01	**64**	**AMENDED JUDGMENT: William Martin Valuck (1) count(s) 2, 3**, 4, and 5: 60 mos imprisonment cc, $634,484.91 restitution cc, upon release 3 yrs supervised release cc, $50 special assessment ***AMENDED 4/4/01 - 70 mths imprisonment consisting of 60 mths as to count 2 and 70 mths as to counts 3, 4 and 5 all to run concurrently, upon release 3 yrs supervised release as to counts 2,3,4 and 5 to run concurrently, $200 special assessment, $633,984.91 restitution*** (Signed by Judge Howell Cobb) cc: HC, USA, USM, USPO, Cribbs 4/10/01 (bse) [Entry date 04/10/01]

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APPENDIX C

INDICTMENT
DATED 12-16-98

FILED-CLERK
U.S. DISTRICT COURT
98 DEC 15 PM 5:12
TX EASTERN-BEAUMONT
BY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

UNITED STATES OF AMERICA	*	
	*	
VS.	*	CRIMINAL NO. 1:98-CR- 206
	*	
WILLIAM MARTIN VALUCK	*	Judge Cobb

I N D I C T M E N T

THE UNITED STATES GRAND JURY CHARGES:

COUNT 1

That from on or about February, 1996, to on or about March, 1997, in the Eastern District of Texas, WILLIAM MARTIN VALUCK, Defendant herein, knowingly devised and intended to devise a scheme and artifice to defraud and to deceive various investors by diverting monies for Defendant's personal use from investment funds placed with Defendant by means of false and fraudulent pretenses and representations knowing at the time that such pretenses and representations would be and were false when made, said scheme so devised and intended to be devised as follows:

INTRODUCTION

The Defendant, WILLIAM MARTIN VALUCK, aided and abetted by other persons, represented to potential investors, that the Defendant and other persons operated an investment firm known as Independent Physicians Management, LTD. The Defendant made representations to potential investors that Independent Physicians Management, LTD. raised capital from individual investors and invested such capital in short-term loans to banks in Europe. According to representations made to investors by Defendant and others working with the Defendant, such European banks would borrow

C1

the investor funds on a short-term basis under a bank guarantee and would generate profits to the investors from two percent a month to forty-five percent a month. The Defendant, WILLIAM MARTIN VALUCK, aided and abetted by others, further represented to potential investors that Defendant had successfully invested such monies in the past. The Defendant, WILLIAM MARTIN VALUCK, also represented to potential investors that their funds would be held in an escrow account until such investments were made and would be returned to investors if such investments were not made.

THE SCHEME

The Defendant, WILLIAM MARTIN VALUCK, aided and abetted by others, were aware that the representations described above were false and fraudulent when made. As part of said scheme the Defendant, WILLIAM MARTIN VALUCK, and others working with the Defendant, induced individual investors to give funds to Defendant for the purpose of making the above investments by the use of such intentional misrepresentations and concealment of facts. Investment funds obtained from investors were deposited to the account of Life Guard Services, Citizens Bank of Texas, Huntsville, Texas, an account controlled by an accomplice of the Defendant. The Defendant and others used the investment funds for personal expenses of Defendant and others and to make investments for Defendant's personal benefit or gain.

As a result of said scheme and artifice to defraud, the Defendant received approximately $500,000 in investment funds from investors which were used for the benefit of Defendant and others, causing losses to such investors of the same amount.

0002

On or about the 28th day of April, 1996, in the Eastern District of Texas, WILLIAM MARTIN VALUCK, Defendant herein, for the purpose of executing or attempting to execute the aforesaid scheme and artifice, did knowingly cause to be transmitted in interstate and foreign commerce, by means of a wire communication, certain signs, signals, and sounds, that is, a facsimile transmission, sent from Nederland, Texas to Bank Julius Baer, Geneva, Switzerland, requesting $100,000 be transferred from an investor's bank account to the Life Guard Services account at Citizens Bank of Texas, Huntsville, Texas, all in violation of Title 18, United States Code, Section 1343.

COUNT 2

The grand jury realleges the introduction and scheme and artifice described in Count 1 of the indictment and incorporates the same by reference.

On or about the 14th day of February, 1996, in the Eastern District of Texas, WILLIAM MARTIN VALUCK, Defendant herein, for the purpose of executing or attempting to execute the aforesaid scheme and artifice, did knowingly cause to be transmitted in interstate and foreign commerce, by means of a wire communication, certain signs, signals, and sounds, that is, a computer facsimile transmission, sent from Orange, Texas to Muriel Siebert & Co., Inc., 885 Third Avenue, New York, New York, requesting $100,000 be transferred from an investment account to the Life Guard Services account at Citizens Bank of Texas, Huntsville, Texas, all in violation of Title 18, United States Code, Section 1343.

COUNT 3

On or about the 30th day of March, 1996, in the Eastern District of Texas, WILLIAM MARTIN VALUCK, Defendant herein, did cause to be transported and transferred in interstate commerce from the State of Louisiana to the State of Texas, money of a value greater than $5,000.00, in the form of a check, No. 5015, in the amount of $50,000, drawn on a personal checking account at the bank of Tuscaloosa Commerce Bank, Denham Springs, Louisiana, knowing such check or money to have been taken by fraud, in violation of Title 18, United States Code, Section 2314.

COUNT 4

On or about the 27th day of March, 1996, in the Eastern District of Texas, WILLIAM MARTIN VALUCK, Defendant herein, did cause to be transported and transferred in interstate commerce from the State of Louisiana to the State of Texas, money of a value greater than $5,000.00, in the form of a bank money order, No. 60022, in the amount of $30,000, drawn on the American Bank and Trust Company, Opelousas, Louisiana, knowing such check or money to have been taken by fraud, in violation of Title 18, United States Code, Section 2314.

COUNT 5

On or about the 15th day of February, 1996, in the Eastern District of Texas and elsewhere, WILLIAM MARTIN VALUCK, Defendant herein, knowing that the money or funds involved in a financial transaction represented the proceeds of some form of unlawful activity, that being the wire fraud described in Count 2 of this indictment which is adopted herein, did knowingly conduct a financial transaction, with the intent to promote the carrying on of such specified unlawful activity, said financial transaction being the purchase and negotiation of $25,000 of cashier's checks from Citizens Bank of Texas, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(1).

A TRUE BILL

GRAND JURY FOREPERSON

MIKE BRADFORD
UNITED STATES ATTORNEY

ROBERT L. RAWLS
ASSISTANT U.S. ATTORNEY

APPENDIX D

DOCKET SHEETS
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

U.S. District Court

Texas, Eastern (Beaumont)

CRIMINAL DOCKET FOR CASE #: 98-CR-206-ALL

USA v. Valuck

Filed: 12/16/98
Dkt# in other court: None

Case Assigned to: Judge Howell Cobb

WILLIAM MARTIN VALUCK (1)
defendant
[term 12/28/00]

Clarence H Cribbs, Jr
[term 12/28/00]
[COR LD NTC ret]
Law Offices of C Haden "Sonny" Cribbs Jr
7705 Calder
Beaumont, TX 77707
Jefferson
409/866-6761
FTS good

Frank Warren Henderson
[term 03/22/99]
14098392610
[COR LD pda]
Federal Defender's Office
350 Magnolia
Suite 117
Beaumont, TX 77701
Jefferson
409/839-2608

George McCall Secrest, Jr
[term 12/28/00]
17136501602
[COR LD NTC]
Bennett & Secrest LLP

D 1

808 Travis
24th Floor
Houston, TX 77002
713/757-0679
William Martin Valuck
[term 12/28/00]
2803 Chandler Street
Kilgore, TX 75662

Pending Counts:
NONE

Terminated Counts:	Disposition
18:1343.F FRAUD BY WIRE, RADIO, OR TELEVISION (1)	Dismissed on motion of govt. (1)
18:1343.F FRAUD BY WIRE, RADIO, OR TELEVISION (2)	60 mos imprisonment cc, $634, 484.91 restitution cc, upon release 3 yrs supervised release cc, $50 special assessment ***AMENDED 4/4/01 - 70 mths imprisonment consisting of 60 mths as to count 2 and 70 mths as to counts 3, 4 and 5 all to run concurrently, upon release 3 yrs supervised release as to counts 2,3,4 and 5 to run concurrently, $200 special assessment, $633, 984.91 restitution*** (2)
18:2314.F SCHEME TO DEFRAUD: MONEY, STATE TAX STAMPS (3 - 4)	60 mos imprisonment cc, $634, 484.91 restitution cc, upon release 3 yrs supervised release cc, $50 special assessment ***AMENDED 4/4/01 - 70 mths imprisonment consisting of 60 mths as to count 2 and 70 mths as to counts 3, 4 and 5 all to run concurrently, upon release 3 yrs supervised release as to counts 2,3,4 and 5 to run concurrently, $200 special assessment, $633, 984.91 restitution*** (3 - 4)
18:1956-4999.F MONEY LAUNDERING - FRAUD, OTHER (5)	60 mos imprisonment cc, $634, 484.91 restitution cc, upon release 3 yrs supervised release cc, $50 special assessment ***AMENDED 4/4/01 - 70 mths imprisonment consisting of 60 mths as to count 2 and 70 mths as to counts 3, 4 and 5

all to run concurrently, upon release 3 yrs supervised release as to counts 2,3,4 and 5 to run concurrently, $200 special assessment, $633, 984.91 restitution***
(5)

Offense Level (disposition): 4
Complaints:
NONE
U. S. Attorneys:
Robert Leo Rawls, AUSA
[term 12/28/00]
14098392550
[COR LD NTC]
U S Attorney's Office
350 Magnolia
Suite 150
Beaumont, TX 77701-2237
Jefferson
409/839-2538

DOCKET PROCEEDINGS

DATE # DOCKET ENTRY

12/16/98	**1**	**INDICTMENT as to William Martin Valuck (1) count(s) 1-2,** 3-4, 5 (rwr) [Entry date 12/17/98]
12/16/98	2	Form AO 257 filed as to William Martin Valuck (rwr) [Entry date 12/17/98]
12/17/98	--	ARREST WARRANT issued as to William Martin Valuck and handed to USM for service. (rwr) [Entry date 12/17/98]
12/17/98	--	Copies of indictment, docket sheet and warrant to HC, WCR, USA, USPO, AB. (rwr) [Entry date 12/17/98]
12/29/98	--	ARREST of William Martin Valuck in W/D of North Carolina. (rwr) [Entry date 01/12/99]
1/11/99	3	Rule 40 Documents as to William Martin Valuck received from W/D of North Carolina, consisting of minute sheets, order to answer, waiver of rule 40 hrgs, bond, order setting cond of rls, cja 20. cc: ESH, HC, USA, USPO 1/12/99 (rwr) [Entry date 01/12/99]

1/19/99	4	NOTICE of Hearing as to William Martin Valuck, setting Arraignment and Attorney Status Conference for 2:30 1/28/99 before Magistrate Judge Earl S. Hines cc: ESH, USM, USPO, USA, Defendant (tp) [Entry date 01/19/99]
1/28/99	--	Arraignment as to William Martin Valuck called before Magistrate Hines. Dfts bond continued. (rwr) [Entry date 01/28/99]
1/28/99	5	NOTICE of Hearing as to William Martin Valuck :, set Arraignment for 2:00 2/8/99 for William Martin Valuck before Magistrate Judge Earl S. Hines cc: ESH, USM,USPO, USA, Valuck 1/28/99 (rwr) [Entry date 01/28/99]
1/28/99	6	Minutes filed as to William Martin Valuck re: arraignment called before Magistrate Judge Earl S. Hines (Ct rep: Judy Lewis) (rwr) [Entry date 01/28/99]
2/3/99	7	ARREST WARRANT Returned Executed as to William Martin Valuck on 12/28/98 (rwr) [Entry date 02/04/99]
2/8/99	--	Initial appearance as to William Martin Valuck held before Magistrate Hines. Defendant appeared without counsel and was informed of rights. Dfts bond continued. (rwr) [Entry date 02/09/99]
2/8/99	**8**	**CJA 23 FINANCIAL AFFIDAVIT by William Martin Valuck (rwr)** [Entry date 02/09/99]
2/8/99	**9**	**ORDER Appointing Federal Public Defender Frank Warren** Henderson for William Martin Valuck (Signed by Magistrate Judge Earl S. Hines) cc: USA, FPD 2/9/99 (rwr) [Entry date 02/09/99]
2/8/99	--	Arraignment as to William Martin Valuck held before Magistrate Hines. Defendant appeared with counsel and was informed of rights. Dfts bond continued. (rwr) [Entry date 02/09/99]
2/8/99	--	PLEA entered by William Martin Valuck before Magistrate Hines. Court accepts plea. Not Guilty: William Martin Valuck (1) count(s) 1-2, 3-4, (rwr) [Entry date 02/09/99]
2/8/99	10	ORDER relating to Pretrial Discovery and Inspection as to William Martin Valuck (Signed by Magistrate Judge Earl S. Hines) cc: USA, FPD 2/9/99 (rwr) [Entry date 02/09/99]
2/8/99	11	ORDER set jury selection for 9:00 4/12/99 for William Martin Valuck before Judge Howell Cobb, set Jury trial for 9:00 4/12/99 for William Martin Valuck before Judge Howell Cobb (Signed by Magistrate Judge Earl S. Hines) cc: USA, USPO, USM, FPD, AB 2/9/99 (rwr)

[Entry date 02/09/99]

2/8/99	12	ORDER as to William Martin Valuck that funds in the amount of $2700 be paid by dft in lump sum payment within 10 days after case is closed. (Signed by Magistrate Judge Earl S. Hines) cc: USA, FPD 2/9/99 (rwr) [Entry date 02/09/99]
2/8/99	13	Minutes filed as to William Martin Valuck re: initial appearance and arraignment held before Magistrate Judge Earl S. Hines (Ct rep: Judy Lewis) (rwr) [Entry date 02/09/99]
3/2/99	14	MOTION by USA as to William Martin Valuck for reconsideration of [9-1] order (rwr) [Entry date 03/03/99]
3/4/99	15	ORDER as to William Martin Valuck granting [14-1] motion for reconsideration of [9-1] order. A hearing will be held at 4:00pm on 3/22/99. (Signed by Magistrate Judge Earl S. Hines) cc: USA, dft atty 3/5/99 (rwr) [Entry date 03/05/99]
3/15/99	--	Docket call as to William Martin Valuck set at 9:00 4/12/99 for William Martin Valuck before Judge Howell Cobb (acb) [Entry date 03/15/99]
3/15/99	--	Jury selection as to William Martin Valuck set for 9:00 4/13/99 for William Martin Valuck before Judge Howell Cobb (acb) [Entry date 03/15/99]
3/15/99	--	Notice of Mailing of: Docket Call & Trial Scheduling. cc: HC, USM, USPO, attys, deft (acb) [Entry date 03/15/99]
3/22/99	16	MOTION by William Martin Valuck to substitute attorney (rwr) [Entry date 03/22/99]
3/22/99	17	ORDER granting [16-1] motion to substitute attorney terminated attorney Frank Warren Henderson for William Martin Valuck Added Clarence H Cribbs Jr as to William Martin Valuck (1) (Signed by Magistrate Judge Earl S. Hines) cc: USA, FPD, dft atty 3/22/99 (rwr) [Entry date 03/22/99]
3/25/99	--	Notice of Mailing of: Docket Call & Trial Scheduling. cc: Cribbs (acb) [Entry date 03/25/99]
4/6/99	18	MOTION by William Martin Valuck to continue trial (rwr) [Entry date 04/06/99]
4/7/99	--	Motion hearing held before HC as to William Martin Valuck re: [18-1] motion to continue trial. Ct granted motion and dft continued on bond (bjb) [Entry date 04/08/99]
4/7/99	19	ORDER granting [18-1] mo to continue trial as to William

		Martin Valuck (1), to continue in interests of justice. Time Excluded from 4/7/99 to **/**/**, terminated deadlines (signed by Judge Howell Cobb) cc: HC, USA, USPO, USM, Cribbs, Valuck 4/8/99 (bjb) [Entry date 04/08/99]
4/7/99	20	Minutes filed as to William Martin Valuck of motion hrg held before Judge Howell Cobb (Ct rep: Wendell Parks) (bjb) [Entry date 04/08/99]
4/7/99	21	ORDER as to William Martin Valuck denying as moot [14-1] mo to reconsider the appointment of an atty at the expense of the govt (signed by Magistrate Judge Earl S. Hines) cc: HC, ESH, USA, Cribbs 4/8/99 (bjb) [Entry date 04/08/99]
5/12/99	22	ORDER resetting docket call for 7/12/99 reset jury selection for 7/13/99 for William Martin Valuck before Judge Howell Cobb (Signed by Judge Howell Cobb) cc: USA, USPO, USM, dft atty 5/13/99 (rwr) [Entry date 05/13/99]
6/25/99	--	Docket call as to William Martin Valuck set at 9:00 7/12/99 for William Martin Valuck before Judge Howell Cobb (acb) [Entry date 06/25/99]
6/25/99	--	Jury selection as to William Martin Valuck set for 9:00 7/13/99 for William Martin Valuck before Judge Howell Cobb (acb) [Entry date 06/25/99]
6/25/99	--	Notice of Mailing of Document: Docket Call & Trial Scheduling. cc: HC, USM, USPO, attys, deft (acb) [Entry date 06/25/99] [Edit date 06/25/99]
7/2/99	23	MOTION by William Martin Valuck to continue trial (seal) [Entry date 07/02/99]
7/7/99	24	ORDER as to William Martin Valuck granting [23-1] motion to continue trial as to William Martin Valuck (1), to Continue in Interests of Justice Time Excluded from 7/7/99 to **/**/** This case is continued from the 7/12/99 setting and will be reset for trial at a later date. (Signed by Judge Howell Cobb) cc: USA, USPO, USM, AB, dft atty 7/8/99 (rwr) [Entry date 07/08/99]
12/9/99	25	MOTION by USA as to William Martin Valuck to require dft to document need for contiuance (rwr) [Entry date 12/10/99]
12/10/99	26	ORDER as to William Martin Valuck granting [25-1] motion to require dft to document need for contiuance as to William Martin Valuck (1) (Signed by Judge Howell Cobb) cc: USA, dft atty 12/13/99 (rwr) [Entry date 12/13/99]
5/22/00	27	ORDER OF SETTING as to William Martin Valuck, docket call on 6/12/00 at 9:00 set jury selection for 9:00 6/13/00

		with trial to commence during the weeks immediately following 6/13/00 for William Martin Valuck before Judge Howell Cobb (Signed by Judge Howell Cobb) cc USA, USM, USPO, AB, dft atty 5/23/00 (bsw) [Entry date 05/23/00]
5/24/00	--	Docket call as to William Martin Valuck set at 9:00 6/12/00 for William Martin Valuck before Judge Howell Cobb (acb) [Entry date 05/24/00]
5/24/00	--	Jury selection as to William Martin Valuck set for 9:00 6/13/00 for William Martin Valuck before Judge Howell Cobb (acb) [Entry date 05/24/00]
5/24/00	--	Notice of Mailing of Docket Call & Trial Scheduling. cc: HC, USM, USPO, attys (acb) [Entry date 05/24/00]
5/24/00	--	Notice of Mailing of Docket Call & Trial Scheduling. cc: deft (acb) [Entry date 05/24/00]
6/12/00	--	Docket call as to William Martin Valuck held before Judge Cobb. Deft appeared w/cnsl on bond. Jury selection and trial will be held 6/13/00 @ 9:00 am. Bond continued (acb) [Entry date 06/13/00]
6/12/00	28	Minutes filed as to William Martin Valuck re: docket call held before Judge Howell Cobb (Ct rep: Gina Medley (NM)) (acb) [Entry date 06/13/00]
6/13/00	--	Voir dire begun as to William Martin Valuck (1) count(s) 1-2, 3-4, 5 (acb) [Entry date 06/14/00]
6/13/00	--	Jury selection as to William Martin Valuck held before Judge Cobb. Jury sworn and trial began (acb) [Entry date 06/14/00]
6/13/00	--	1st day Jury trial as to William Martin Valuck held before Judge Cobb. Deft appeared on bond. Govt and deft presented testimony and evidence. Trial continued until 9:00 am 6/14/00 (acb) [Entry date 06/14/00]
6/13/00	29	Minutes filed as to William Martin Valuck re: Voir dire, Jury selection, 1st day Jury trial before Judge Howell Cobb (Ct rep: Brandi Sewell) (acb) [Entry date 06/14/00]
6/14/00	--	2nd day Jury trial as to William Martin Valuck held before Judge Cobb. Govt and deft presented testimony and evidence. Govt rested. Trial continued until 9:00 am 6/15/00. Deft continued on bond (acb) [Entry date 06/15/00]
6/14/00	30	Minutes filed as to William Martin Valuck re: 2nd day Jury trial before Judge Howell Cobb (Ct rep: Wendell Parks) (acb) [Entry date 06/15/00]

6/15/00	--	3rd day of Jury trial as to William Martin Valuck held before Judge Cobb. Govt and Dft evidence presented. Bond continued. (fxc) [Entry date 06/19/00]
6/15/00	--	MOTION in open court by USA as to William Martin Valuck to dismiss cour 1 of indictment (fxc) [Entry date 06/19/00]
6/15/00	--	ORAL ORDER as to William Martin Valuck granting [0-0] oral motion to dismiss court 1 of indictment as to William Martin Valuck (1) (Entered by Judge Howell Cobb) (fxc) [Entry date 06/19/00]
6/15/00	32	Court's Instructions to the Jury as to William Martin Valuck (fxc) [Entry date 06/19/00]
6/15/00	33	Jury notes (from Jury to Ct) filed as to William Martin Valuck (fxc) [Entry date 06/19/00]
6/15/00	34	Jury notes (from Ct to Jury) filed as to William Martin Valuck (fxc) [Entry date 06/19/00]
6/15/00	--	DISMISSAL of Count(s) on Government Motion as to William Martin Valuck Counts Dismissed: William Martin Valuck (1) count(s) 1 (fxc) [Entry date 06/19/00]
6/15/00	35	Minutes filed as to William Martin Valuck re: 3rd day of Jury trial before Judge Howell Cobb (Ct rep: Wendell Parks) (fxc) [Entry date 06/19/00]
6/16/00	31	ORDER that PSI be completed by 8/1/00; attys shall file objections or statement of no objections in writing by 8/22/00; final presentence report to judge by 9/12/00; set sentencing for 9:30 9/22/00 for William Martin Valuck before Judge Howell Cobb (signed by Judge Howell Cobb) cc: USA, USPO, USM, Cribbs, Valuck 6/19/00 (bc) [Entry date 06/19/00]
6/16/00	--	4th Jury trial as to William Martin Valuck held before Judge Cobb. Jury verdict of guilty to cnts 2,3,4, & 5. Bond continued. (fxc) [Entry date 06/19/00]
6/16/00	36	Exhibit list by USA as to William Martin Valuck (fxc) [Entry date 06/19/00]
6/16/00	37	Witness list by USA as to William Martin Valuck (fxc) [Entry date 06/19/00]
6/16/00	38	Exhibit list by William Martin Valuck (fxc) [Entry date 06/19/00]
6/16/00	39	Witness list by William Martin Valuck (fxc)

[Entry date 06/19/00]

6/16/00 40 Jury note #7 filed as to William Martin Valuck (fxc) [Entry date 06/19/00]

6/16/00 41 JURY VERDICT as to William Martin Valuck Guilty: William Martin Valuck (1) count(s) 2, 3-4, 5 (fxc) [Entry date 06/19/00]

6/16/00 42 AMENDED ORDER Setting Conditions of Release as to William Martin Valuck (Signed by Judge Howell Cobb) 6/16/00 handed to Dft, Cribbs and USPO 6/19/00 faxed to USA, USM (fxc) [Entry date 06/19/00]

6/16/00 43 Minutes filed as to William Martin Valuck re: 4th day of Jury trial before Judge Joe J. Fisher (Ct rep: Wendell Parkes) (fxc) [Entry date 06/19/00]

8/18/00 44 NOTICE of Hearing as to William Martin Valuck: set Sentencing for 9:30 9/22/00 for William Martin Valuck before Judge Howell Cobb cc: HC, USM, USPO, attys, deft (acb)
[Entry date 08/18/00]

9/18/00 45 NOTICE of Hearing as to William Martin Valuck: reset Sentencing for 9:30 11/17/00 for William Martin Valuck before Judge Howell Cobb cc: HC, USM, USPO, attys, deft (acb)
[Entry date 09/18/00]

9/26/00 46 Receipt for surrender□ of Passport as to William Martin Valuck Passport # 200131840 Country: USA (fxc) [Entry date 09/26/00]

10/4/00 -- Mail returned: [45-1] Notice hearing reset Sentencing for 9:30 11/17/00 for William Martin Valuck before Judge Howell Cobb addressed to William Martin Valuck. Note: Not deliverable as addressed, unable to forward. (acb) [Entry date 10/05/00]

10/20/00 47 NOTICE of Hearing as to William Martin Valuck: set Sentencing for 9:30 11/17/00 for William Martin Valuck before Judge Howell Cobb cc: HC, USM, USPO, attys, deft (acb)
[Entry date 10/23/00]

11/17/00 48 NOTICE of Hearing as to William Martin Valuck: reset Sentencing for 10:30 12/14/00 for William Martin Valuck before Judge Howell Cobb cc: HC, USM, USPO, attys, deft (acb)
[Entry date 11/17/00]

12/14/00 49 MOTION by William Martin Valuck to depart downward from the suggested guideline (bse) [Entry date 12/14/00]

12/14/00 50 ORDER as to William Martin Valuck denying [49-1] motion to depart downward from the suggested guideline as to William Martin Valuck (1) (Signed by Judge Howell Cobb) cc: HC, USA, USPO, Cribbs 12/15/00 (bse) [Entry date 12/15/00]

12/14/00 -- Sentencing held before HC as to William Martin Valuck (1) count(s) 3-4, 5: 70 mos imprisonment cc, $634,484.91 restitution cc, upon release 3 yrs supervised release cc, $150 special assessment; William Martin Valuck (1) count(s) 2: 60 mos imprisonment cc, $634,484.91 restitution cc, upon release 3 yrs supervised release cc, $50 special assessment. Deft continued released on previous bond and ordered to surrender 1/29/01 to designated institution (bse) [Entry date 12/15/00]

12/14/00 51 **PRESENTENCE INVESTIGATION REPORT (Sealed) and PSI** Sentencing Portion (Sealed) as to William Martin Valuck (bse)
[Entry date 12/15/00]

12/14/00 52 **Minutes filed as to William Martin Valuck of sentencing** held before Judge Howell Cobb (Ct rep: W Parks) (bse) [Entry date 12/15/00]

12/14/00 53 NOTICE OF APPEAL from the judgment and sentence... by William Martin Valuck of William Martin Valuck (1) count(s) 3-4, 5 Filing Fee $ 105.00 Receipt # 103385. (jel) [Entry date 12/26/00]

12/26/00 -- Notice of appeal and certified copy of docket as to William Martin Valuck to USCA: [53-1] appeal by William Martin Valuck. cc: HC, USA, USM, USPO, Secrest (w/transcript order form) (jel) [Entry date 12/26/00]

12/28/00 54 **JUDGMENT William Martin Valuck (1) count(s) 3-4, 5. 70 mos** imprisonment cc, $634,484.91 restitution cc, upon release 3 yrs supervised release cc, $150 special assessment. Count(s) 2: 60 mos imprisonment cc, upon release 3 yrs supervised release cc, $50 special assessment (Signed by Judge Howell Cobb) cc: HC, USA, USM, USPO, Cribbs 12/29/00 (bse) [Entry date 12/29/00]

1/2/01 -- NOTICE of Docketing ROA from USCA as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck USCA Number: 00-41479 (jel) [Entry date 01/02/01]

1/8/01 -- REQUEST FOR TRANSCRIPTS of 1/28/99 arraignment and 2/8/00 initial appearance in appeal as to William Martin Valuck [53-1] appeal by William Martin Valuck (jel)

[Entry date 01/08/01]

1/8/01 -- REQUEST FOR TRANSCRIPTS of 4/7/99 motion hearing, 6/14-16/00 trial and 12/14/00 sentencing in appeal as to William Martin Valuck [53-1] appeal by William Martin Valuck (jel) [Entry date 01/08/01]

1/8/01 -- REQUEST FOR TRANSCRIPT of 6/13/00 voir dire/1st day of trial in appeal as to William Martin Valuck [53-1] appeal by William Martin Valuck (jel) [Entry date 01/08/01]

1/9/01 55 TRANSCRIPT of motion hearing held before Judge Howell Cobb filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck for dates of 4/7/99 (11 pages) (jll) [Entry date 01/16/01]

1/9/01 56 TRANSCRIPT of jury trial filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck for dates of 6/14/00 (199 pages) (jll) [Entry date 01/16/01]

1/9/01 57 TRANSCRIPT of jury trial filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck for dates of 6/15/00 (142 pages) (jll) [Entry date 01/16/01]

1/9/01 58 TRANSCRIPT filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck for dates of 6/16/00 (12 pages) (jll) [Entry date 01/16/01]

1/9/01 59 TRANSCRIPT of sentencing hearing held before Judge Howell Cobb filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck for dates of 12/14/00 (40 pages) (jll) [Entry date 01/16/01]

2/5/01 60 TRANSCRIPT of 1/28/99 arraignment held before Magistrate Judge Hines filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck (jel) [Entry date 02/08/01]

2/5/01 - 61 TRANSCRIPT of 2/8/99 initial appearance held before Magistrate Judge Hines filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck (jel) [Entry date 02/08/01]

2/5/01 62 Judgment Returned Executed as to William Martin Valuck ; on 1/29/01 dft voluntarily surrendered to the warden of FPC Montgomery, at Maxwell AFB, AL 36112 (jel) [Entry date 02/09/01]

2/15/01 63 TRANSCRIPT of 6/13/00 trial held before Judge Cobb and a jury filed as to William Martin Valuck Re: [53-1] appeal by William Martin Valuck (jel) [Entry date 02/15/01]

3/12/01 -- Certified and transmitted record on appeal to U.S. Court of

		Appeals as to William Martin Valuck : [53-1] appeal by William Martin Valuck: 1 vol of the record, 8 vols of transcript and 2 sealed envelopes. (jel) [Entry date 03/12/01]
4/4/01	**64**	**AMENDED JUDGMENT: William Martin Valuck (1) count(s) 2, 3**, 4, and 5: 60 mos imprisonment cc, $634,484.91 restitution cc, upon release 3 yrs supervised release cc, $50 special assessment ***AMENDED 4/4/01 - 70 mths imprisonment consisting of 60 mths as to count 2 and 70 mths as to counts 3, 4 and 5 all to run concurrently, upon release 3 yrs supervised release as to counts 2,3,4 and 5 to run concurrently, $200 special assessment, $633,984.91 restitution*** (Signed by Judge Howell Cobb) cc: HC, USA, USM, USPO, Cribbs 4/10/01 (bse) [Entry date 04/10/01]
5/31/01	--	Transmitted Supplemental Record on Appeal: ALL EXHIBITS as to William Martin Valuck [53-1] appeal by William Martin Valuck (jll) [Entry date 05/31/01]
3/26/02	--	Record on Appeal as to William Martin Valuck returned from U.S. Court of Appeals: [53-1] appeal: 1 vol of the record, 9 vols of transcript, 2 sealed envelopes and exhibits. (jel) [Entry date 04/01/02]
4/10/02	65	JUDGMENT OF USCA (certified copy) as to William Martin Valuck Re: affirming judgment/order William Martin Valuck (1) count(s) 2, 3-4, 5 USCA #: 00-41479. Issued as mandate 4/5/02. cc: HC, finance, USA (jel) [Entry date 04/17/02]

Case Flags:
APPEAL
CLOSED

END OF DOCKET: 1:98cr206-0

APPENDIX E

DOCKET SHEETS
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

General Docket
US Court of Appeals for the Fifth Circuit
Court of Appeals Docket #: 00-41479 Filed: 12/28/00
Nsuit: 0
USA v. Valuck
Appeal from: Eastern District of Texas, Beaumont

- -
Lower court information:

District: 0540-1 : 1:98-CR-206-ALL
Trial Judge: Howell Cobb, US District Judge
Court Reporter: Wendell Parks, US Court Reporter
Court Reporter: Brandi R Sewell, Court Reporter
Court Reporter: Tape - GM, Gabriel Mendieta
Court Reporter: Tape - JLL, Judy L Lewis
Court Reporter: Tape - AM, Adele McMillian
Date Filed: 12/16/98
Date order/judgment: **/**/**
Date NOA filed: 12/14/00
- -
Fee status: Paid

- -
Prior cases:
None
Current cases:
None

Docket as of April 5, 2002 10:28 pm Page 1

00-41479 USA v. Valuck

UNITED STATES OF AMERICA Plaintiff - Appellee	Robert L Rawls, Assistant US Attorney FAX 409-839-2550 409-839-2538 Suite 150 [COR LD NTC gvt] US Attorney's Office Eastern District of Texas 350 Magnolia Street Beaumont, TX 77701-2237
v.	
WILLIAM MARTIN VALUCK Defendant - Appellant	George McCall Secrest, Jr FAX 713-650-1602 713-757-0679 24th Floor [COR LD NTC ret] 808 Travis Street Houston, TX 77002

E 1

00-41479 USA v. Valuck

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

WILLIAM MARTIN VALUCK

Defendant - Appellant

00-41479 USA v. Valuck

12/28/00	Direct criminal case docketed. NOA filed by Appellant William Martin Valuck. [00-41479] (cdd)
1/5/01	Judgment and commitment order entered in the District Court 12/29/00. [00-41479] (pac)
1/8/01	3 Transcript order received from Appellant William Martin Valuck for Court Reporter Wendell Parks, Court Reporter Brandi R Sewell, Court Reporter Tape - JLL. Date of Hearing: 4/7/99 (Motion Hrg), 6/14-16/00, 12/14/00 (Sentencing),-Parks; 6/13/00 (Voir dire) - Sewell; 1/28/99 (Arraignment), 2/8/00 (Initial Appearance) - Tape JLL. [00-41479] Transcript Order ddl satisfied. Ct. Reporter Acknowledgment due on 1/23/01 for Tape - JLL, for Brandi R Sewell, for Wendell Parks. (slh)
1/11/01	Transcript order acknowledgment received from Court Reporter Brandi R Sewell. Estimated pages: 200 Date Financial Arrangements Made: 1/5/01 [00-41479] Ct. Reporter Acknowledgement ddl satisfied. Transcript due on 2/5/01 for Brandi R Sewell. Ct. Reporter Discount Date is 3/6/01 for Brandi R Sewell. (jmw)
1/12/01	Appearance form filed by Robert L Rawls for Appellee USA. [00-41479] (pac)
1/25/01	Transcript filed in district court by Court Reporter Wendell Parks on 1/9/01. [00-41479] Ct. Reporter Acknowledgment ddl canceled. (mfn)
2/7/01	Court Reporter Tape - JLL has been replaced by Tape - AM. (Copy of Transcript Order form sent to new court reporter.) [00-41479] Transcript ddl canceled. Ct. Reporter Discount

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Date canceled. Ct. Reporter Acknowledgment due on 2/22/01 for Tape - AM. (ams)

2/7/01 Transcript filed in district court by Court Reporter Tape - AM (Filed by Court reporter, Frank McMillian) on 2/5/01. [00-41479] Ct. Reporter Acknowledgment ddl canceled. (slh)

2/22/01 Transcript filed in district court by Court Reporter Brandi R Sewell on 2/15/01. [00-41479] Transcript ddl satisfied. Ct. Reporter Discount Date canceled. ROA due on 3/9/01. (slh)

3/15/01 Record on appeal filed. Vol(s) of Pleadings: 1 Vol(s) of Transcripts: 8 SEALED: 1 env. (PSI, Recommedation, Objection). [00-41479] ROA ddl satisfied. (slb)

3/26/01 Briefing notice issued. [00-41479] A/Pet's Brief due on 5/7/01 for William Martin Valuck. (slb)

3/26/01 Record on appeal released to attorney George McCall Secrest for Appellant William Martin Valuck. Volumes: 9. [00-41479] (slb)

00-41479 USA v. Valuck

4/26/01 Unopposed Motion filed by Appellant William Martin Valuck to extend time to file appellant(s) brief until 6/3/01. [3207534-1] Excess Pages? (Y/N) n [00-41479] (mal)

4/26/01 CLERK Order filed granting unopposed motion to extend time to file Appellant's Brief [3207534-1] A/Pet's Brief ddl updated to 6/4/01 for William Martin Valuck. Copies to all counsel. [00-41479] (mal)

5/22/01 Appearance form filed by George McCall Secrest for Appellant William Martin Valuck. [00-41479] (tdc)

5/22/01 Unopposed motion filed by Appellant William Martin Valuck to view sealed document. Which Document?: PSI, Recommendation, Objections [00-41479] Excess Pages? (Y/N) n [00-41479] (rjd)

5/25/01 COURT Order filed granting appellant's unopposed motion to view sealed Presentence Investigation Report, Recommendations, and Objections [3231901-1]. (RHB) Copies to all counsel. [00-41479] (mfn)

6/1/01 Unopposed motion filed by Appellant William Martin Valuck to extend time to file appellant(s) brief 48 hours from the receipt of the trial exhibits. [3240969-1] Pages? (Y/N) N [00-41479] (slh)

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6/1/01	Record on appeal returned to 5CCA. SEALED: 1 Envelope [00-41479] Miscellaneous ddl satisfied. (nfd)
6/4/01	Record on appeal filed. Exhibits: 1 box. [00-41479] (sja)
6/4/01	CLERK Order filed granting appellant's unopposed motion to extend time to file Appellant's Brief [3240969-1] A/Pet's Brief ddl updated to 6/11/01 for William Martin Valuck. Copies to all counsel. [00-41479] (tdc)
6/4/01	Record on appeal released to attorney George McCall Secrest for Appellant William Martin Valuck. Exhibits: 1 box. [00-41479] (tdc)
6/11/01	Extension granted by phone until: 6/26/01 to file brief for Appellant William Martin Valuck. [00-41479] (slh)
6/13/01	Confirmation letter filed by Appellant William Martin Valuck confirming an extension of time to and including 6/26/01 for filing appellant's brief. [00-41479] A/Pet's Brief ddl updated to 6/26/01 for William Martin Valuck. (pac)
6/18/01	Record on appeal forwarded by George McCall Secrest for Appellant William Martin Valuck to Robert L Rawls for Appellee USA. Volumes: 9 Exhibits: 1 box [00-41479] (sja)

6/18/01	Appellant's Brief filed by Appellant William Martin Valuck. Copies of brief: 7 # of pages: 73. Word count: 12,146 Disk Provided [Y/N]: y Date of COS: 6/15/01 Sufficient [Y/N]: y. [00-41479] A/Pet's Brief ddl satisfied. E/Res's Brief due on 7/18/01 for USA. (sja)
6/18/01	Record excerpts filed by Appellant William Martin Valuck # of copies: 4 Sufficient [Y/N]: y. [00-41479] (sja)
7/16/01	Appellee's Brief filed by Appellee USA. Copies of Brief: 7 # of pages: 30. Disk Provided [Y/N]: Y Date of COS: 07/13/01 Sufficient [Y/N]: Y. [00-41479] E/Res's Brief ddl satisfied. Reply Brief due on 7/30/01 for William Martin Valuck. (slb)
7/16/01	Record on appeal requested from Robert L Rawls for Appellee USA. [00-41479] Miscellaneous due on 7/26/01 for USA. (slb)
7/16/01	Record on appeal returned to 5CCA. Volumes: 9 Exhibits: 1 box [00-41479] Miscellaneous ddl satisfied. (mal)
7/27/01	Reply brief filed by Appellant William Martin Valuck. Copies of Brief: 8 # of pages: 15. Disk Provided [Y/N]: Y

E 4

	Date of COS: 7/26/01 Sufficient [Y/N]: Y. [00-41479] Reply Brief ddl satisfied. (sds)
8/28/01	Case tentatively calendared for oral argument Week of: 11/5/01. [00-41479] (sme)
10/2/01	Case calendared for oral argument. [00-41479] (gam)
11/7/01	Oral argument heard. Case argued by George McCall Secrest for Appellant William Martin Valuck, Robert L Rawls for Appellee USA [00-41479] (sme)
11/8/01	Supplemental authorities (FRAP 28(j)) filed by Appellant William Martin Valuck [3424182-1] . [00-41479] (mal)
3/14/02	Opinion filed. Issd in T form? y Issue Mandate due on 4/4/02. [00-41479] (jma)
3/14/02	Judgment entered and filed. [00-41479] (jma)
3/20/02	Record on appeal returned to 5CCA. Volumes: 9 Exhibits: 1 Box SEALED: 1 Env [00-41479] (jtt)
3/22/02	Record on appeal returned to USDC. Volumes: 9 Exhibits: 1 Box SEALED: 1 Env. [00-41479] (jtt)
4/5/02	Mandate issued. Approved BOC Issued (Y/N)?: n [00-41479] Issue Mandate ddl satisfied. (jaa)

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APPENDIX F

LEXIS PRINTOUT OF MONEY LAUNDERING CASES FROM 6-1-01 THRU 6-1-02

View: **Cite** | KWIC | Full | Custom **1 - 50** of 446 Text Only | Print | Download | Fax | Ema
FOCUS™ | Save As ECLIPSE | Hide Hits

Source: My Sources > Federal Legal - U.S. > **Federal Court Cases and ALR, Combined Courts**

Terms: **money laundering and date(geq (6/1/01) and leq (6/1/02))** (Edit Search)

Select for FOCUS™ or Delivery

1. United States v. Gordon, Docket Nos. 00-1122(L), 00-1123, 00-1124, 00-1125, 00-1126(XAP), 00-1181, 00-1235, 00-1277, 00-1164, UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, 2002 U.S. App. LEXIS 10234, December 6, 2001, Argued, May 30, 2002, Decided

OVERVIEW: The district court committed plain error by grouping tax and mail fraud offenses for sentencing where the two offenses were distinct, and a more severe sentence was necessary to adequately punish defendant.

CORE TERMS: grouping, sentencing, plain error, mail fraud, sentence, guideline, tax evasion, tax loss, money laundering, sentencing error...

... commit mail fraud, **money laundering,** perjury, tax evasion, ...
... fraud, mail fraud, and **money laundering.** A seventy-three ...
... million involved in the **money laundering** offense. Id. at *79. ...
... after adjustment for his **money laundering** offense, see § ...
... after adjustment for his **money laundering** offense, see § ...
... level was then added for the **money laundering** offense, pursuant to § ...
... level, adjusted for the **money laundering** offense would be 31 (the **money laundering** offense, the level of which is 25, ...
... for grouping together **money laundering** and fraud counts. 179 ...
... in separating fraud and **money laundering** counts into two distinct ...
... Commission subsequently decided that **money laundering** and underlying offenses should be grouped ...
... months on count 69, the **money laundering** count (which carries a ...
... in which we refused to group **money laundering** and the underlying offense because the victims were ...
... rejected Napoli and elected to have **money laundering** and underlying offenses grouped, ...
... offense levels for **money laundering.** See U.S.S.G. § ...

2. United States v. Timbrook, No. 01-3646, UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, 2002 U.S. App. LEXIS 10039, April 8, 2002, Argued, May 29, 2002, Decided

OVERVIEW: Sentence of work release in a county jail was a sentence of imprisonment, for purposes of sentencing guidelines; thus inmate's challenge to enhancement failed.

F1

Supreme Court, U.S.
FILED
SEP 27 2002
CLERK

No. 01-11006

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM VALUCK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record

MICHAEL CHERTOFF
Assistant Attorney General

NINA GOODMAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

10 pp

QUESTION PRESENTED

Whether the evidence is sufficient to support petitioner's conviction for money laundering under 18 U.S.C. 1956(a)(1)(A)(i).

IN THE SUPREME COURT OF THE UNITED STATES

No. 01-11006

WILLIAM VALUCK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A10) is reported at 286 F.3d 221.

JURISDICTION

The judgment of the court of appeals was entered on March 14, 2002. The petition for a writ of certiorari was filed on June 12, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Texas, petitioner was convicted of wire fraud, in violation of 18 U.S.C. 1343; interstate transportation of property obtained by fraud, in violation of 18 U.S.C. 2314; and

money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i). He was sentenced to 70 months' imprisonment, to be followed by a three-year period of supervised release, and was ordered to pay $634,000 in restitution. The court of appeals affirmed. Pet. App. A1-A10.

1. Petitioner, a physician, operated a small ambulance company in Huntsville, Texas, with Mike Cleveland. When the ambulance company went out of business, Cleveland started a new business, Life Guard Services, and opened a checking account for the company at Citizens Bank in Huntsville. Cleveland was the only signatory on the account because petitioner feared that his previous tax problems would cause the IRS to place a tax lien on the account. Pet. App. A3; Gov't C.A. Br. 4.

After establishing the account, petitioner and Cleveland began soliciting individuals to invest in prime bank debenture programs, falsely assuring potential investors that petitioner had previously made successful investments in such programs. Susan Snow and Richard Bratt agreed to invest in the bank debenture program and, pursuant to their agreement with petitioner, Snow and Bratt transferred by wire $100,000 to Cleveland's Life Guard Services account. Before the transfer, that account had a balance of $200. Because petitioner was not a signatory on the account and did not have direct access to the funds, he instructed Cleveland to purchase $25,000 in cashier's checks with money from the account. Petitioner deposited three cashier's checks totaling $17,500 in a bank account belonging to his girlfriend, Sylvia Hargroder; he

deposited a $5,000 check in a joint account held by petitioner and Hargroder; and he cashed a $2,500 check at Citizens Bank. After petitioner told Hargroder that the cashier's checks represented profits from his investments, Hargroder introduced petitioner to her mother, who invested $30,000 with petitioner. For the next several months, petitioner continued to solicit and obtain funds from other investors. Pet. App. A4; Gov't C.A. Br. 5-10.

2. A federal grand jury returned an indictment charging petitioner with two counts of wire fraud (Counts 1 and 2), two counts of interstate transportation of property obtained by fraud (Counts 3 and 4), and one count of money laundering (Count 5). Pet. App. C1-C5. Count 2 of the indictment alleged that, for the purpose of executing his fraudulent investment scheme, petitioner sent a computer facsimile requesting that $100,000 in Bratt's and Snow's investment account be transferred to Cleveland's Citizens Bank Account. Count 5 alleged that petitioner,

> knowing that the money or funds involved in a financial transaction represented the proceeds of some form of unlawful activity, that being the wire fraud described in Count 2 of this indictment * * * , did knowingly conduct a financial transaction, with the intent to promote the carrying on of such specified unlawful activity, said financial transaction being the purchase and negotiation of $25,000 of cashier's checks from Citizens Bank of Texas, in violation of Title 18, United States Code, Section 1956(a)(1)(A)[(i)].

Pet. App. C5.

At trial, petitioner moved for a judgment of acquittal at the close of the government's case and renewed the motion at the close of all the evidence. The district court granted the motion on

Count 1, but denied it on the other counts. The jury found petitioner guilty on the four remaining counts of the indictment. Pet. App. A4-A5.

3. The court of appeals affirmed. Pet. App. A1-A10. The court rejected petitioner's contention that upholding his money laundering conviction "would essentially turn the money laundering statute into a 'money spending' statute." Id. at A6. The court explained that "the manner in which [petitioner] spent the ill-gotten money is irrelevant because it is the deposit of the funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor wire fraud." Ibid.

The court of appeals also rejected petitioner's contention that his negotiation of the cashier's checks did not "promote" the underlying wire fraud. Pet. App. A6-A8. The court explained that because petitioner "intentionally chose not to include his own name as a signatory on the Cleveland account so as to avoid the watchful eye of the IRS, * * * the only way [petitioner] could prosper from [his] scheme was to receive the cashier's checks and then either deposit or cash the check." Id. at A8. Petitioner's negotiation of the cashier's checks therefore "promoted the antecedent wire fraud" by enabling him to profit from the fraud while "avoid[ing] detection by the IRS." Ibid.

ARGUMENT

Petitioner contends (Pet. 16-19) that the Court should grant certiorari to resolve a conflict in the circuits on the question whether an intent to promote the carrying on of unlawful activity

under 18 U.S.C. 1956(a)(1)(A)(i) can be based on a defendant's spending of the proceeds of unlawful activity. That question, however, is not presented here.[1]

As the court of appeals explained (Pet. App. A6-A7), petitioner's money laundering conviction was not based on evidence that he spent money derived from his wire fraud scheme. Rather, the indictment charged petitioner with money laundering based on his "negotiation of $25,000 of cashier's checks," Pet. App. A6 n.2, and "the manner in which [petitioner] spent the ill-gotten money is irrelevant because it is the deposit of funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor wire fraud." Id. at A6.[2]

Nor is there any other basis for granting review in this case. Although there is some disagreement among courts of appeals on whether a transaction can violate Section 1956(a)(1)(A)(i) by promoting the carrying on of an already completed crime, see Pet.

---

[1] The government has sought certiorari on the question whether "proceeds" in Section 1956(a)(1)(A)(i) means "profits." United States v. Scialabba, No. 02-442. Because petitioner does not dispute that his transaction involved the proceeds of unlawful activity, see Pet. App. A5, there is no reason to hold the petition here pending the disposition in Scialabba.

[2] Because petitioner's conviction is not based on his expenditure of funds, petitioner's reliance (Pet. 17) on United States v. McGahee, 257 F.3d 520 (6th Cir. 2001), is misplaced. The defendant in that case had been convicted of money laundering based on evidence that he used proceeds of an embezzlement scheme to make payments on his home mortgage, his car loan, and a personal loan. The court of appeals reversed, holding that "[p]aying for personal goods, alone, is not sufficient to establish that funds were used to promote an illegal activity." Id. at 526-527.

App. A7 n.5, the facts of the cases on which petitioner relies are distinguishable from the facts here. Three of the cases cited by petitioner (Pet. 17) hold that a defendant's receipt or deposit of criminal proceeds, standing alone, is not sufficient to establish money laundering under Section 1956(a)(1)(A)(i). United States v. Jolivet, 224 F.3d 902, 909-911 (8th Cir. 2000) (evidence of defendant's "singular act of depositing settlement checks" that represented proceeds of completed insurance fraud schemes was insufficient to sustain money laundering conviction); United States v. Calderon, 169 F.3d 718, 721-722 (11th Cir. 1999) (reversing money laundering conviction where there was no evidence that single deposit of drug proceeds furthered underlying drug trafficking activity); United States v. Heaps, 39 F.3d 479, 485-486 (4th Cir. 1994) (defendant's receipt of payment for completed drug transaction did not constitute money laundering, where there was no evidence of further transactions and "the only evidence as to what was done with the money after it was sent was that it was put in a box in a drawer of the defendant's house"). But as the court of appeals explained, petitioner's conviction does not rest solely on evidence that he received or deposited the proceeds of completed criminal activity. Instead, the evidence shows that petitioner arranged to have the proceeds of his fraud wired into an account that did not bear his signature. By subsequently depositing and cashing checks drawn on that account, petitioner was able to profit from the fraud while "avoid[ing] the watchful eye of the IRS." Pet. App. A8.

Petitioner's transactions also promoted the carrying on of additional fraudulent activity. Petitioner's depositing of the checks into Hargroder's account promoted the continuance of his fraudulent scheme because petitioner told Hargroder that the checks represented profits from his investments, and Hargroder subsequently recommended petitioner as an investment advisor to her mother, who invested $30,000 in petitioner's scheme. Gov't C.A. Br. 7, 16. Thus, petitioner's financial transactions promoted "not only his prior unlawful activity, but also his ongoing and future unlawful activity." United States v. Haun, 90 F.3d 1096, 1100 (6th Cir. 1996), cert. denied, 519 U.S. 1059 (1997). For that reason as well, the decisions in Jolivet, Calderon, and Heaps are inapposite here.[3]

---

[3] Petitioner's reliance (Pet. 17) on United States v. Anderson, 189 F.3d 1201 (10th Cir. 1999), and United States v. Garcia-Emanuel, 14 F.3d 1469 (10th Cir. 1994), is also misplaced. Those cases interpret 18 U.S.C. 1956(a)(1)(B)(i), a section of the money laundering statute that is not at issue in the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

MICHAEL CHERTOFF
Assistant Attorney General

NINA GOODMAN
Attorney

SEPTEMBER 2002

AUG-20-2003 14:57 LN P.03

DISTRIBUTE OCT 31 2002

FILED
OCT 21 2002
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No. 01-11006

Supreme Court of the United States

WILLIAM VALUCK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

WILLIAM VALUCK
13880-058
Maxwell Air Force Base
Montgomery, AL 36112

RECEIVED
OCT 31 2002
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SUPREME COURT, U.S.

10 pp

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2.) **WHETHER A CRIMINAL DEFENDANT CAN BE CONVICTED UNDER 18 U.S.C. § 1956 FOR DEPOSITING AND SPENDING THE PROCEEDS OF ALREADY COMPLETED ILLEGAL ACTIVITY IS A QUESTION WHICH DIVIDES THE COURTS OF APPEALS AND SHOULD BE DECIDED BY THIS COURT** 4

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SUPPLEMENTAL STATEMENT OF THE CASE

Mr. Valuck has filed a petition for Writ of Certiorari with this Court in which he presented the following question for review:

> Whether 18 U.S.C. § 1956, the statute governing money laundering, should be construed as broadly as the Fifth Circuit did in Mr. Valuck's case, to include any form of 'money spending' involving ill gotten gains, contrary to the holdings of the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits?

(Petition for Writ of Certiorari, page i)

The government has responded to the petition for Writ of Certiorari by conceding that Mr. Valuck's conviction for violation of 18 U.S.C. § 1956 was upheld by the Fifth Circuit for "depositing and cashing checks" that were drawn by another person against a separate bank account to which Mr. Valuck not a signatory, where the checks were proceeds of completed criminal activity. (Government Response 6)

While the government concedes that a significant division in the federal circuits exists as to whether "whether a transaction can violate Section 1956(a)(1)(A)(i) by promoting the carrying on of an already completed crime", the government argues, however, that the only question presented by Mr. Valuck is whether "spending" proceeds of illegal activity can violate the statute.

Mr. Valuck demonstrates within that (1) the question, whether a criminal defendant can be convicted under 18 U.S.C. § 1956 for depositing and spending the proceeds of already completed illegal activity, is a "subsidiary question fairly included" in the question whether 18 U.S.C. § 1956, "should be construed as broadly as the Fifth Circuit did in Mr. Valuck's case"; and (2) whether a criminal defendant can be convicted under 18 U.S.C. § 1956 for depositing and spending the proceeds of already completed illegal activity is a question which divides the courts of appeals and should be decided by this Court.

ARGUMENT

1.) THE QUESTION, WHETHER A CRIMINAL DEFENDANT CAN BE CONVICTED UNDER 18 U.S.C. § 1956 FOR DEPOSITING AND SPENDING THE PROCEEDS OF ALREADY COMPLETED ILLEGAL ACTIVITY, IS A "SUBSIDIARY QUESTION FAIRLY INCLUDED" IN THE QUESTION WHETHER 18 U.S.C. § 1956, "SHOULD BE CONSTRUED AS BROADLY AS THE FIFTH CIRCUIT DID IN MR. VALUCK'S CASE".

This Court's Rule 14.1(a) provides that "[t]he statement of any question presented is deemed to comprise every subsidiary question fairly included therein."

As set forth above, the government has argued that the question presented in this case is limited to whether "spending of the proceeds of unlawful activity" constitutes a violation of 18 U.S.C. § 1956. (Government Response page 5)

While the government attorney is correct that Mr. Valuck has presented the question whether spending the proceeds of unlawful activity constitutes "money laundering" within the meaning of 18 U.S.C. § 1956, the government attorney has overlooked the fact that the question presented by Mr. Valuck also includes the question "whether 18 U.S.C. § 1956 . . should be construed as broadly as the Fifth Circuit did in Mr. Valuck's case."

It is uncontested that Mr. Valuck deposited a check which was given to him, that Mr. Valuck spent the money, that the check represented proceeds of unlawful activity, and that the unlawful activity which had generated the proceeds was completed by the time that Mr. Valuck deposited and spent the money. The court of appeals held that this deposit necessarily included negotiation of the check as part of the process of depositing it and held that the deposit of the money was the act that constituted the third element of a violation of 18 U.S.C. § 1956; i.e. that the deposit constituted "the financial transaction [which] was conducted with the intent to

promote the carrying on of a specified unlawful activity." (Government Response, page 5) (Petition, Appendix, pages A6-A7)

To the extent that the government attorney has argued that the question presented to this Court is limited to whether spending proceeds of unlawful activity constitutes a violation of 18 U.S.C. § 1956, the government attorney's argument is not well taken and should be rejected by this Court.

Plainly, the question, whether a criminal defendant can be convicted under 18 U.S.C. § 1956 for depositing and spending the proceeds of already completed illegal activity, is a "subsidiary question fairly included" in the question whether 18 U.S.C. § 1956, "should be construed as broadly as the Fifth Circuit did in Mr. Valuck's case".

2.) WHETHER A CRIMINAL DEFENDANT CAN BE CONVICTED UNDER 18 U.S.C. § 1956 FOR DEPOSITING AND SPENDING THE PROCEEDS OF ALREADY COMPLETED ILLEGAL ACTIVITY IS A QUESTION WHICH DIVIDES THE COURTS OF APPEALS AND SHOULD BE DECIDED BY THIS COURT.

As set forth in Mr Valuck's petition for Writ of Certiorari, and conceded by the government in their response, the Court of Appeals for the Fifth Circuit directly held that Mr Valuck's act of negotiating cashier's checks he received from a codefendant, who purchased the cashier's checks from funds wired to the codefendant's checking account by a victim of wire fraud "promoted", within the meaning of 18 U.S.C. § 1956(A)(1)(A)(i), the antecedent crime of wire fraud which was complete and completed when the alleged victim wired funds to the codefendant's account.

In his petition, Mr Valuck has pointed out that this decision by the Fifth Circuit directly conflicts with the decisions of the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits.

The government attorney does not dispute that Mr. Valuck's case from the Fifth Circuit directly conflicts with numerous Tenth Circuit decisions. See *United States v. Anderson*, 189 F.3d 1201; 1999 U.S. App LEXIS 20037 (10th Cir 1999) ("...this court has cautioned against interpreting the statute so broadly as to "turn the money laundering statute into a 'money spending statute.'" We have recognized the difficulty "of separating money laundering, which is punishable by up to twenty years in prison, from mere money spending, which is legal.") (quoting *United States v. Sanders*, 928 F.2d 940, 946 (10th Cir. 1991) and *United States v. Garcia-Emanuel*, 14 F.3d 1469, 1474 (10th Cir. 1994))

While the government attorney has attempted to distinguish the facts in Mr. Valuck's case from the facts in the conflicting cases from the Fourth, Eighth, and Eleventh Circuit cited by Mr. Valuck, the government attorney has mischaracterized these cases.

For example, the government attorney has argued that *United States v. Jolivet*, 224 F.3d 902, 909 (8th Cir. 2000) is distinguishable from Mr. Valuck's case because, counsel asserts, in *Jolivet* "defendant's 'singular act of depositing settlement checks' that represented proceeds of completed insurance fraud schemes was insufficient to sustain money laundering conviction". (Government Response, page 6)

In *Jolivet*, the government's *argument* was that "Jolivet's acts of endorsing and depositing the checks made the proceeds available for use, thereby furthering the illegal activity" *Jolivet*, 224 F.3d at 909. When the court could find no evidence supporting this *argument*, the court held that depositing the checks and spending the money could not sustain the conviction because it did not "promote" the antecedent unlawful activity.

The government argument in *Jolivet* is the precise same argument made in Mr. Valuck's case but *rejected* by the Tenth Circuit and *adopted* by the court of appeals for the Fifth Circuit; grounds for grant of certiorari by this Court.

The government attorney also argues that *United States v. Calderon*, 169 F.3d 718, 722 (11th Cir. 1999), cited by Mr. Valuck in his petition as another conflicting case, is distinguishable. The government attorney's argument is limited to stating that the holding in *Calderon* was "reversing money laundering conviction where there was no evidence that single deposit of drug proceeds furthered underlying drug trafficking activity". (Government Response, page 6)

In actuality, *Calderon* is directly on point factually, with a directly conflicting legal holding. As in *Jolivet*, and as in Mr. Valuck's case, the government *argued* that depositing proceeds of an antecedent crime had "promoted" the antecedent crime within the meaning of 18 U.S.C. § 1956. Instead of *accepting* this argument as the Fifth Circuit did in Mr. Valuck's case, the Eleventh Circuit *rejected* this argument, holding that "the Government did not present any

evidence showing that Appellant's conduct furthered the alleged underlying narcotics trafficking or that Appellant's conduct added to the profitability of the alleged narcotics trafficking." *Calderon*, 169 F.3d at 722. (emphasis added) Here again, another court of appeals has ruled on a case factually analogous to Mr. Valuck's case but decided the case in a manner directly conflicting with Mr. Valuck's case.

Finally, the government attorney attempts to distinguish the facts in *United States v. Heaps*, 39 F.3d 479, 486 (4th Cir. 1994) from the facts in Mr. Valuck's case. The government attorney has done this by stating that in *Heaps*, "defendant's receipt of payment for completed drug transaction did not constitute money laundering, where there was no evidence of further transactions and 'the only evidence as to what was done with the money after it was sent was that it was put in a box in a drawer of the defendant's house'". (Government Response, page 6)

Here again, the government argument is confusing because the factual scenario is analogous to Mr. Valuck's case, yet the holding is directly contradictory because there simply was no "evidence" in Mr. Valuck's case as to how the deposit of the money "promoted" the antecedent crime.

To the extent that the government *argued* that receipt of the money allowed Mr. Valuck to profit from the antecedent unlawful activity, this is the same *argument* made by the government and *accepted* by the Fifth Circuit but *rejected* by the other courts of appeals. To the extent that the government has argued that the deposit allowed Mr. Valuck to avoid detection by the IRS, this is simply a variation on the argument that it 'allowed Mr. Valuck to profit'. Moreover, this factual circumstance is no different from the factual circumstances in *Heaps* where depositing money in a box kept the money from being detected by the government. It's also analogous to the factual circumstance in *United States v. McGahee*, 257 F.3d 520; 2001 U.S. App. LEXIS

15417 (6th Cir. 2001), where the court of appeals held that writing checks to obtain cash made the funds less available to discover by the government, yet did *not* satisfy the requirements for conviction under 18 U.S.C. § 1956.

As argued by Mr. Valuck in his petition, the split in the circuits is clear cut and the opposing positions are hardening instead of harmonizing. Mr. Valuck's case provides an opportunity for this Court to decide, *in a factually analogous case*, the reoccurring questions whether *either* "depositing" or "spending" the proceeds of *antecedent* criminal activity, with nothing more, is sufficient to support conviction under 18 U.S.C. § 1956.

Based on all of the foregoing, this Court should grant certiorari and review the judgment of the Court of Appeals for the Fifth Circuit in Mr. Valuck's case.

CONCLUSION

For all of the foregoing reasons, Petitioner William Valuck respectfully prays that his Petition for Writ of Certiorari be **GRANTED** and the case set for argument on the merits.

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